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COLORADO'S STATE LAND LAWS

1914

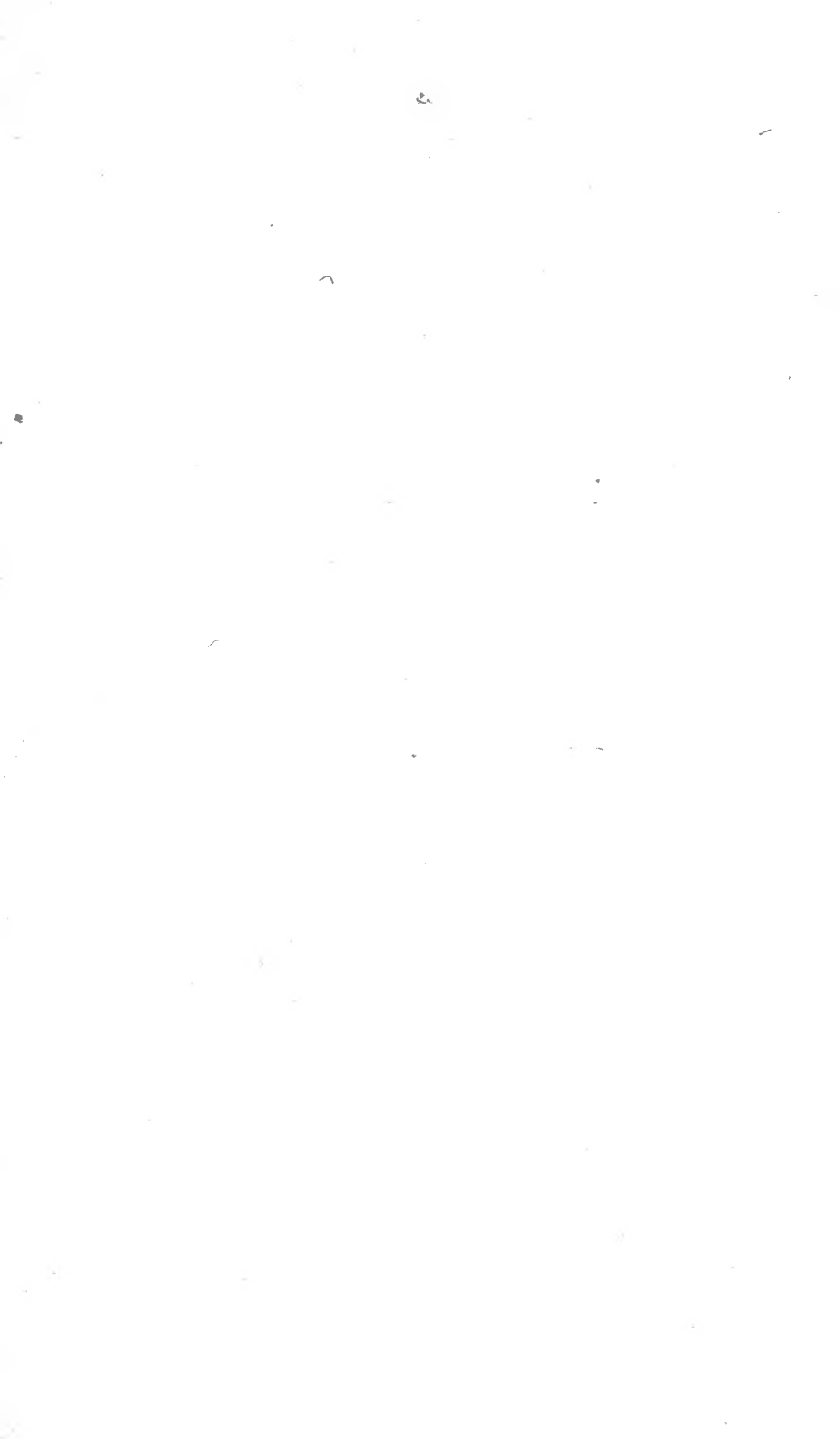


ISSUED UNDER THE AUTHORITY OF
The State Board of Land Commissioners
VOLNEY T. HOGGATT, Register

APPROVED BY THE ATTORNEY GENERAL OF THE STATE OF COLORADO



FIRST EDITION---NINETEEN FOURTEEN



Colorado. Laws, statutes, etc.

PUBLISHED BY AUTHORITY

STATUTES
OF THE
STATE OF COLORADO
RELATING TO
SALE AND DISPOSITION
OF
STATE LANDS

1914



DENVER, COLORADO
THE SMITH-BROOKS PRINTING COMPANY, STATE PRINTERS
1914

**CONDITION OF THE VARIOUS GENERAL AND SPECIAL GRANTS
OF PUBLIC LANDS DONATED BY ACTS OF CONGRESS TO
THE STATE OF COLORADO NOW UNDER THE CONTROL OF
THE STATE BOARD OF LAND COMMISSIONERS OF COLO-
RADO, AS SHOWN AT END OF BIENNIAL PERIOD, NOVEM-
BER 30, 1912**

SCHOOL AND INDEMNITY SCHOOL LANDS

| | |
|------------------------------|--------------|
| Total acreage granted*..... | 3,561,572.40 |
| Total acreage sold..... | 483,636.50 |
| Total acreage remaining..... | 3,077,935.90 |

AGRICULTURAL COLLEGE LANDS

| | |
|------------------------------|-----------|
| Total acreage granted..... | 89,925.63 |
| Total acreage sold..... | 55,534.44 |
| Total acreage remaining..... | 34,391.19 |

INTERNAL IMPROVEMENT LANDS

| | |
|------------------------------|------------|
| Total acreage granted..... | 502,198.73 |
| Total acreage sold..... | 324,066.49 |
| Total acreage remaining..... | 178,132.24 |

PENITENTIARY LANDS

| | |
|------------------------------|-----------|
| Total acreage granted..... | 31,265.49 |
| Total acreage sold..... | 21,869.26 |
| Total acreage remaining..... | 9,396.23 |

PUBLIC BUILDING LANDS

| | |
|------------------------------|-----------|
| Total acreage granted..... | 31,904.62 |
| Total acreage sold..... | 26,691.93 |
| Total acreage remaining..... | 5,212.69 |

SALINE LANDS

| | |
|------------------------------|-----------|
| Total acreage granted..... | 18,836.62 |
| Total acreage sold..... | 2,473.76 |
| Total acreage remaining..... | 16,362.86 |

UNIVERSITY LANDS

| | |
|------------------------------|-----------|
| Total acreage granted..... | 45,884.43 |
| Total acreage sold..... | 35,083.78 |
| Total acreage remaining..... | 10,800.65 |

RECAPITULATION

| | |
|------------------------------|--------------|
| Total acreage granted..... | 4,281,587.92 |
| Total acreage sold..... | 949,356.16 |
| Total acreage remaining..... | 3,332,231.76 |

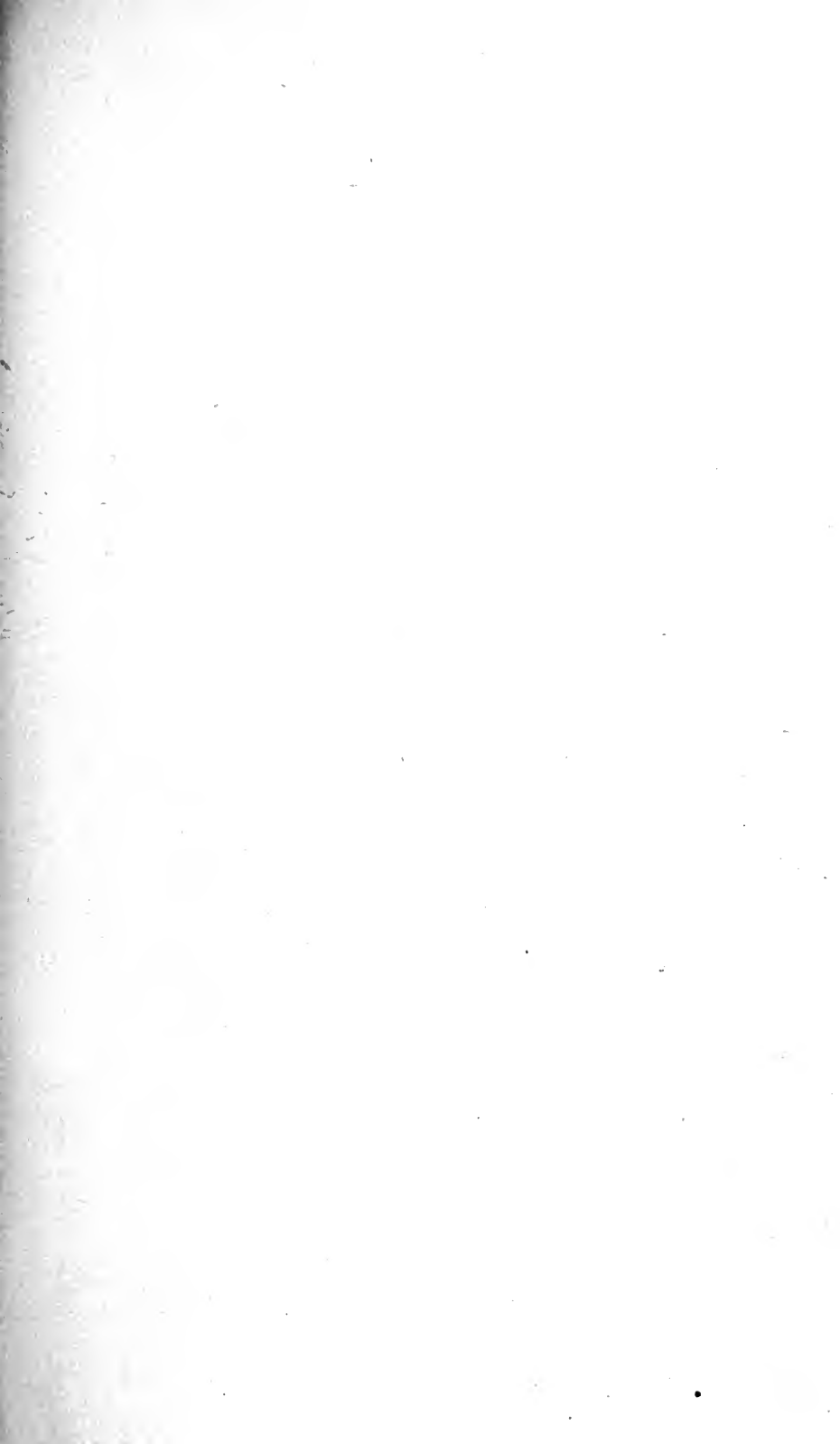
*The United States General Land Office records show that the state of Colorado was granted sections 16 and 36 for the support of the common schools, amounting to 3,715,555.00 acres.

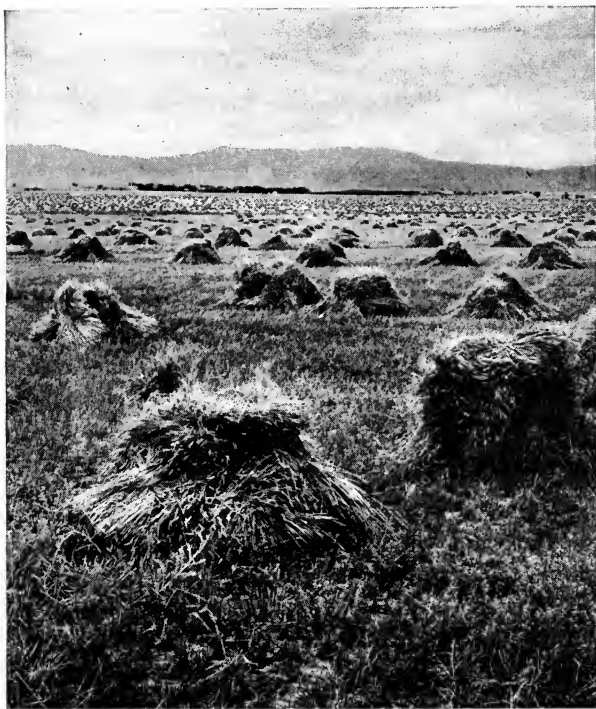
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SECTION 16, TOWNSHIP 1 SOUTH, RANGE 68 WEST, IN ADAMS COUNTY
Formerly State Land, Now an Improved Farm

Colorado's State Land Laws

1914

ENABLING ACT

Section 1. **School lands.**—The sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of congress, other lands equivalent thereto in legal sub-divisions of not more than one quarter-section, and as contiguous as may be, are hereby granted to said state for the support of common schools. (Sec. 7, R. S. 1908, Enabling Act.)

Sec. 2. **Land for public buildings.**—That, provided the state of Colorado shall be admitted into the Union in accordance with the foregoing provisions of this act fifty entire sections of the unappropriated public lands within said state, to be selected and located by direction of the legislature thereof, and with the approval of the president, on or before the first day of January, eighteen hundred and seventy-eight, shall be and are hereby granted, in legal sub-divisions of not less than one quarter-section, to said state for the purpose of erecting public buildings at the capital of said state, for legislative and judicial purposes, in such manner as the legislature shall prescribe. (Sec. 8, R. S. 1908, Enabling Act.)

Sec. 3. **Land for penitentiary.**—That fifty other entire sections of land as aforesaid, to be selected and located and with the approval as aforesaid, in legal sub-divisions as aforesaid, shall be, and they are hereby granted, to said state for the purpose of erecting a suitable building for a penitentiary or state prison in the manner aforesaid. (Sec. 9, R. S. 1908, Enabling Act.)

Sec. 4. **Land for university.**—That seventy-two other sections of land shall be set apart and reserved for the use and support of a state university, to be selected and approved in manner as aforesaid, and to be appropriated and applied as the legislature of said state may prescribe for the purpose named and for no other purpose. (Sec. 10, R. S. 1908, Enabling Act.)

Sec. 5. **Salt springs.**—That all salt springs within said state not exceeding twelve in number, with six sections of land adjoining, and as contiguous as may be to each, shall be granted to said state for its use, the said land to be selected by the governor of said state within two years after the admission of the state, and when so selected to be used and disposed of on such terms, conditions and regulations as the legislature shall direct; *Provided*, That no salt spring or lands, the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall by this act be granted to said state. (Sec. 11, R. S. 1908, Enabling Act.)

Sec. 6. **Sale of agricultural lands.**—That five per centum of the proceeds of the sales of agricultural public lands lying within said state, which shall be sold by the United States subsequent to the admission of said state into the Union, after deducting all the expenses incident to the same, shall be paid to the said state for the purpose of making such internal improvements within said state as the legislature thereof may direct; *Provided*, That this section shall not apply to any lands disposed of under the homestead laws of the United States, or to any lands now or hereafter reserved for public or other uses. (Sec. 12, R. S. 1908, Enabling Act.)

Sec. 7. **School lands—How sold.**—That the two sections of land in each township herein granted for the support of common schools shall be disposed of only at public sale and at a price not less than two dollars and fifty cents per acre, the proceeds to constitute a permanent school fund, the interest of which to be expended in the support of common schools. (Sec. 14, R. S. 1908, Enabling Act.)

Sec. 8. **Mineral lands excepted.**—That all mineral lands shall be excepted from the operation and grants of this act. (Sec. 15, R. S. 1908, Enabling Act.)

Approved March 3, 1875.

CONSTITUTION OF THE STATE OF COLORADO

Sec. 9. **Appointment of officers—Vacancy.**—The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for, and may remove any such officer for incompetency, neglect of duty or malfeasance in office. If during the recess of the senate a vacancy occur in any such office,

the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of auditor of state, state treasurer, secretary of state, attorney-general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law. The senate in deliberating upon executive nominations may sit with closed doors, but in acting upon nominations they shall sit with open doors, and the vote shall be taken by ayes and noes, which shall be entered upon the journal. (Sec. 6, Art. IV, Constitution.)

Sec. 10. School fund inviolate.—The public school fund of the state shall forever remain inviolate and intact; the interest thereon, only, shall be expended in the maintenance of the schools of the state, and shall be distributed amongst the several counties and school districts of the state, in such manner as may be prescribed by law. No part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated, except as herein provided. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law directed. The state shall supply all losses thereof that may in any manner occur. (Sec. 3, Art. IX, Constitution; p. 42, R. S. 1908.)

This section cited in considering a proposed bill for a loan of the school fund. 18 Colo., 196-199; 32 Pac., 273.

This section cited in considering section 2 of this article. 18 Colo., 235; 32 Pac., 423.

This section cited in considering a proposed bill creating a Board of Control for State Canal No. 1. 19 Colo., 69; 34 Pac., 276.

This section cited in an action on warrants drawn on a road fund. 1 Colo. App., 371; 29 Pac., 290.

The general school fund belongs to the county until it is appropriated and accredited to the respective districts. 12 Colo., 457; 21 Pac., 497.

The amendment to Sec. 3 of Art. XI of the Constitution (Laws 1909, C. 148) is not in conflict with Sec. 3 of Art. IX. 53 Colo., 129; 124 Pac., 176.

Sec. 11. Of what school fund consists.—The public school fund of the state shall consist of the proceeds of such lands as have heretofore been, or may hereafter, be granted to the state by the general government for educational purposes; all estates that may escheat to the state; also all other grants, gifts or devices that may be made to this state for educational purpose. (Sec. 5, Art. IX, Constitution; p. 42, R. S. 1908.)

Sec. 12. County superintendent of schools.—There shall be a county superintendent of schools in each county, whose term of office shall be two years, and whose duties, qualifications and compensation shall be prescribed by law. He shall be ex-officio

commissioner of lands within his county, and shall discharge the duties of said office under the direction of the state board of land commissioners, as directed by law. (Sec. 6, Art. IX, Constitution; p. 42, R. S. 1908.)

The legislature has imposed upon county superintendents the duty of general supervision of the school system within their respective counties. 15 Colo. App., 294; 63 Pac., 329.

Sec. 13. Aid to private schools, churches, etc., forbidden.—Neither the general assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property, ever be made by the state, or any such public corporation, to any church, or for any sectarian purpose. (Sec. 7, Art. IX, Constitution; p. 42, R. S. 1908.)

This section referred to in considering a bill for kindergarten schools. 18 Colo., 235; 32 Pac., 423.

This section cited in construing section 34, Article V. 23 Colo., 91; 46 Pac., 118.

Sec. 14. The state board of land commissioners.—The state board of land commissioners shall be composed of three (3) persons to be appointed by the governor, with the consent of the senate, who shall have the direction, control and disposition of the public lands of the state under such regulations as are and may be prescribed by law, one of which persons shall at the time of his appointment be designated as president of the board and whose office shall expire on the second Tuesday of January, 1917, one of which persons shall at the time of his appointment be designated as register of the board and whose term of office shall expire on the second Tuesday of January, 1915, and the third member of said board shall at the time of his appointment be designated as the engineer of the board and shall always be professionally a civil engineer, who, for at least five (5) years, has been actively engaged in the practice of his profession and whose term of office shall expire on the second Tuesday of January, 1913; and the successor and successors of the first members of the board shall each be appointed for the terms of six (6) years.

On the adoption of this amendment by the electors of this state, it shall not go into full force and effect until the second Tuesday of January, 1911.

The members of the board shall each receive a salary of three thousand dollars (\$3,000) per annum until otherwise provided by

law; but the salary of each member of this board is to be paid out of the income of the said state board of land commissioners. (Sec. 9, Art. IX, as amended by Chap. 149, p. 322, S. L. 1909.)

The sale of school lands is confined entirely to the discretion of the Board. 18 Colo., 136; 31 Pac., 860.

"Under such regulations as are and may be prescribed by law" construed to mean, under such reasonable rules as may be prescribed from time to time by the legislature. 18 Colo., 361; 32 Pac., 987.

The legislature is without power to give to a body of its own creation authority to exercise the powers herein conferred, conjointly with the Land Board. 19 Colo., 69; 34 Pac., 276.

This section cited in refusing to answer questions submitted by the Land Board concerning a lease. 27 Colo., 101; 60 Pac., 345.

This section cited in considering the matter of tax exemption after sale of State lands. This decision was based on act of 1889, which was repealed by Revenue Act of 1902. 43 Colo., 466; 96 Pac., 443.

This section cited in a case holding that the Board had power to cancel a lease obtained through fraud. 20 Colo. App., 442; 79 Pac., 751.

This section cited in 51 Colo., 260-265; 117 Pac., 143.

Cited in holding that when the Board attempts to dispose of the State lands under its lawful powers, a failure on its part to substantially comply with the requirements of the legislative act concerning such disposition leaves the title unaffected, and conveys no title in the land to the purchaser. Under such circumstances, the acts of the Board, in executing or delivering any deed or other muniment of title to the land, are *ultra vires*. 21 Colo. App., 86-89; 121 Pac., 128.

Cited in *re* Salaries of Commissioners and Employes of State Land Board. 55 Colo.,; 133 Pac., 140.

Sec. 15. Selection and control of public lands.—It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or other disposition of all the lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law; and in such manner as will secure the maximum possible amount therefor. No law shall ever be passed by the general assembly granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The general assembly shall, at the earliest practicable period, provide by law that the several grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust subject to disposal for the use and benefit of the respective objects for which said grants of land were made, and the general assembly shall provide for the sale of said lands from time to time; and for the faithful application of the proceeds thereof in accordance with the terms of said grants. (Sec. 10, Art. IX, Constitution; p. 43, R. S. 1908.)

The sale of school lands is confined entirely to the discretion of the Board. 18 Colo., 137, 139; 31 Pac., 860.

This section cited in determining what are internal improvements under section 12 of the Enabling Act. 18 Colo., 319; 32 Pac., 612.

This section cited in considering a bill for the leasing of State lands. 18 Colo., 361; 32 Pac., 987.

This section cited in considering an act creating a Board of Control for State Canal No. 1. 19 Colo., 68; 34 Pac., 276.

This section cited in refusing to answer questions submitted by the Land Board concerning the leasing of land. 27 Colo., 101; 60 Pac., 345.

Cited in considering the matter of tax exemption after sale of State lands. This decision was based on act of 1889, which was repealed by Revenue Act of 1902. 43 Colo., 466; 96 Pac., 443.

This section cited in 51 Colo., 260, 265; 117 Pac., 143.

Sec. 16. Public property exempt.—The property, real and personal, of the state, counties, cities, towns and other municipal corporations and public libraries, shall be exempt from taxation. (Sec. 4, Art. X, Constitution; p. 44, R. S. 1908.)

This section considered in connection with sections 3 and 5 concerning the classification of railroad property. 26 Colo., 107; 56 Pac., 664.

Exemption of city lands acquired for water right purposes. 36 Colo., 232; 84 Pac., 1113.

Cited in considering the matter of the taxation of State lands after sale and before title passes. 43 Colo., 473; 96 Pac., 446.

This section cited in holding that a legacy to the State University was not subject to the inheritance tax. 46 Colo., 95; 102 Pac., 1080.

The road-bed and right-of-way of a toll-road company is not exempt. 3 Colo. App., 79; 32 Pac., 551.

This section cited in considering the matter of tax exemption after sale of State lands. 43 Colo., 466; 96 Pac., 443.

This decision was based on the act of 1889, which was repealed by Revenue Act of 1902.

This section cited in the case of *In Re Inheritance Tax, Macky Est.* 46 Colo., 79, 95; 102 Pac., 1080.

Sec. 17. Report of state treasurer.—The treasurer shall keep a separate account of each fund in his hands; and shall, at the end of each quarter of the fiscal year, report to the governor in writing, under oath, the amount of all moneys in his hands to the credit of every such fund, and the place where the same are kept or deposited, and the number and amount of every warrant received, and the number and amount of every warrant paid therefrom during the quarter. Swearing falsely to any such report shall be deemed perjury. The governor shall cause every such report to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the general assembly may require. The general assembly may provide by law further regulations for the safe keeping and management of the public funds in the hands of the treasurer, but, notwithstanding any such regulation, the treasurer and his sureties shall in all cases be held responsible therefor. (Sec. 12, Art. X, Constitution; p. 45, R. S. 1908.)

Cited in construing a proposed bill and holding that no statute to regulate the safe keeping of the public money can operate to relieve the State treasurer or his sureties from liability upon his official bond. 12 Colo., 397; 21 Pac., 487.

The particular bank for depositing may not be designated.—*Id.*

In the absence of the statute the treasurer is not liable for interest. 17 Colo., 171; 28 Pac., 1119.

This section cited in a case considering the bond of a county treasurer. 24 Colo., 165, 172; 49 Pac., 275.

Sec. 18. Making profit on public money — Felony.—The making of profit, directly or indirectly, out of state, county, city, town or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law. (Sec. 13, Art. X, Constitution; p. 45, R. S. 1908.)

Under this section it is proper for the legislature to provide that interest paid by banks shall be deposited to the credit of the State. 12 Colo., 398; 21 Pac., 487.

This section is not self-executing. 14 Colo., 403; 24 Pac., 3; 17 Colo., 171; 28 Pac., 1119.

This section cited in an action by a county treasurer against the sureties upon an indemnifying bond. 5 Colo. App., 461; 39 Pac., 81.

Sec. 19. Preservation of forests.—The general assembly shall enact laws in order to prevent the destruction of, and to keep in good preservation, the forests upon the lands of the state, or upon lands of the public domain, the control of which shall be conferred by congress upon the state. (Sec. 6, Art. XVIII, Constitution; p. 54, R. S. 1908.)

Sec. 20. All laws remain till repealed.—That all laws in force at the adoption of this constitution shall, so far as not inconsistent therewith, remain of the same force as if this constitution had not been adopted, until they expire by their own limitation or are altered or repealed by the general assembly; and all rights, actions, prosecutions, claims and contracts of the territory of Colorado, counties, individuals or bodies corporate (not inconsistent therewith) shall continue as if the form of government had not been changed and this constitution adopted. (Sec. 1, Schedule; p. 60, R. S. 1908.)

Sec. 21. Contracts—Recognizances—Indictments.—That all recognizances, obligations and all other instruments entered into or executed before the admission of the state, to the territory of Colorado, or to any county, school district or other municipality therein, or any officer thereof, and all fines, taxes, penalties and forfeitures due or owing to the territory of Colorado, or any such county, school district or municipality, or officer; and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the change of the form of government. All indictments which shall have been found, or may hereafter be found, and all informations which shall have been filed, or may hereafter be filed, for any crime or offense committed before this constitution takes effect, may be proceeded upon as if no change had taken place, except

as otherwise provided in the constitution. (Sec. 2, Schedule; p. 60, R. S. 1908.)

Sec. 22. Territorial property vests in state.—That all property, real and personal, and all moneys, credits, claims and choses in action, belonging to the territory of Colorado at the adoption of this constitution, shall be vested in and become the property of the state of Colorado. (Sec. 3, Schedule; p. 60, R. S. 1908.)

Sec. 23. Constitution takes effect on president's proclamation.—The provisions of this constitution shall be in force from the day on which the president of the United States shall issue his proclamation declaring the state of Colorado admitted into the Union; and the governor, secretary, treasurer, auditor and superintendent of public instruction of the territory of Colorado shall continue to discharge the duties of their respective offices after the admission of the state into the Union, until the qualification of the officers elected or appointed under the state government; and said officers, for the time they may serve, shall receive the same compensation as the state officers shall by law be paid for like services. (Sec. 12, Schedule; p. 61, R. S. 1908.)

STATE AGRICULTURAL COLLEGE

Sec. 24. Acceptance of terms of congressional act.—That full and complete acceptance, ratification and assent is hereby made and given by the state of Colorado, to all of the provisions, terms, grants and conditions, and purposes of the grants made and prescribed by the act of the congress of the United States, entitled "An act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress, approved July 2, 1862. (L. 1891, p. 18, sec. 1; sec. 86, R. S. 1908, p. 200.)

[The act referred to is found in 12 Stat. L., p. 503.]

Sec. 25. State board of agriculture control fund.—That the state board of agriculture shall have the control of the fund appropriated by the said act of congress, and shall disburse the same for the use and benefit of the state agricultural college, and in accordance with the terms and provisions of said act of congress. (L. 1891, p. 19, sec. 2; sec. 87, R. S. 1908, p. 209.)

Sec. 26. Investment of proceeds of lands sold—Endowment fund.—That all moneys derived from the sale of lands aforesaid by the states to which the lands are apportioned, and from the sales of land-scrip hereinbefore provided for, shall be invested

in stocks of the United States or of the states, or some other safe stocks; or the same may be invested by the states having no state stocks, in any other manner after the legislatures of such states shall have assented thereto, and engaged that such funds shall yield not less than five per centum upon the amount so invested and that the principal thereof shall forever remain unimpaired; *Provided*, That the moneys so invested or loaned shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section five of this act) and the interest of which shall be inviolably appropriated, by each state which may take and claim the benefit of this act, to the endowment, support, and maintenance of at least one college where the leading object shall be without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. (22 Stat. L., p. 484; act of July 2, 1862, ch. 130; 12 Stat. L., p. 503, as amended by the act of March 3, 1883, ch. 102; sec. 4, Art. IV, p. 850, of Vol. 2, Fed. Stat. Ann.)

FORESTRY AND TIMBER LANDS

Sec. 27. **Trees not to be cut.**—No trees needed to conserve the snows, ice or water of any irrigation district shall be cut from any part of the public domain, except as hereinafter provided. (L. 1901, p. 185, sec. 1; sec. 2626, R. S. 1908, p. 743.)

Sec. 28. **Application to cut trees—Contents.**—Any person desiring to cut trees upon any lands owned by the state shall make application in writing to the registrar of the state board of land commissioners, which application shall contain: (a) A complete legal designation of the lands upon which it is desired to cut the trees; (b) The purposes for which such trees are to be used; (c) That he will carefully protect from fires or other damage all trees less in size than those desired to cut; (d) That he will entirely remove, as directed by the state board of land commissioners, all cut trees and their branches in such manner that fires may not consume the smaller trees; (e) That such trees as are desired for use are not necessary for the conservation of the irrigation waters of any irrigation water-shed. (L. 1901, p. 186, sec. 2; sec. 2627, R. S. 1908, p. 743.)

Sec. 29. **Registrar refer application to appraiser.**—The registrar of the state board of land commissioners shall, on receiving

such application, refer the same to the appraiser of state lands, who shall estimate the cost of examining and reporting upon the said application, and the said registrar of the state board of land commissioners shall thereupon require of the applicant a certified check payable to the state treasurer, covering the costs as estimated by the said appraiser of state lands, as well as the costs of all other proceedings, directed in this act, to determine whether such trees can be lawfully cut. (L. 1901, p. 186, sec. 3; sec. 2628, R. S. 1908, p. 743.)

Sec. 30. Registrar publish application.—The registrar of the state board of land commissioners shall cause the application of said person to cut trees to be published, for the full period of thirty days, in one or more daily or weekly newspapers having such circulation, as will fully advise the water users of the irrigation area upon the water-shed on which such trees are growing of the pendency of such application, and that protests to the granting of the application must be made within twenty days from the date of the last publication, which date shall be given in such published notice. (L. 1901, p. 186, sec. 4; sec. 2629, R. S. 1908, p. 744.)

[For exchange of state lands in forest reserve see section 171.]

Sec. 31. Water user may protest.—Any water user of any irrigation district thus affected may protest to the state board of land commissioners against allowing said trees to be cut. (L. 1901, p. 186, sec. 5; sec. 2630, R. S. 1908, p. 744.)

Sec. 32. Appraiser inspect land and trees—Report.—Upon the expiration of the time for making protests as provided in section 4 of this act, the registrar of the state board of land commissioners shall refer all papers and proceedings to the appraiser of state lands, who shall thereupon personally inspect the designated lands and the trees growing thereon and carefully consider the protests, if any, from the water users, and thereupon shall report in writing to the registrar of the state board of land commissioners advising that such trees may be properly disposed of, or against allowing the same to be done; but no trees less than ten inches in diameter two feet above the ground shall be allowed to be cut by any person whomsoever. (L. 1901, p. 187, sec. 6; sec. 2631, R. S. 1908, p. 744.)

[Section 4 referred to is section 30.]

Sec. 33. Notification to protesters—Injunction—Publication of sale—Costs.—Should the report of the appraiser of state lands advise that the trees desired may be properly disposed of, the registrar of the state board of land commissioners shall at once notify by registered letter each and every protesting water user, if any, and such protesting water user or users shall thereafter be

allowed fifteen days in which to commence injunction proceedings in any court of competent jurisdiction restraining the state board of land commissioners from disposing of said trees, and the said state board of land commissioners shall make no defense to the proceedings in injunction by said water users except at the full cost of the applicant desiring to cut said trees from the state lands. Should there be no protests, or should injunction proceedings fail, the said trees desired by said applicant shall be advertised in the paper having the greatest circulation within the state for a period of four weeks, one insertion during each week, and thereafter publicly sold at the state capitol in the city of Denver to the highest bidder, and if such highest bidder be some person other than the applicant, the legitimate costs of said applicant in prosecuting his application, which costs shall only be the expenses incurred by state officials as herein provided, shall be returned to the applicant; *Provided*, No bids shall be received which do not include the costs incurred by said applicant in determining the right to cut the desired trees. Should the appraiser of state lands report adversely to the cutting of the trees desired by applicant, or injunction proceedings bar a sale, said applicant shall not recover any of the costs incurred by reason of this act. (L. 1901, p. 187, sec. 7; sec. 2632, R. S. 1908, p. 744.)

Sec. 34. Bond of person cutting trees.—The state board of land commissioners shall require of all persons cutting trees upon state lands a bond in a sufficient amount, with good and approved security, for the carrying out in good faith of the provisions of this act. (L. 1901, p. 188, sec. 8; sec. 2633, R. S. 1908, p. 744.)

Sec. 35. Tree defined.—For the purposes of this act the word tree shall be held to mean all vegetable growth of a woody texture of any size whatsoever. No lands contemplated in this act shall be leased for any purpose whatsoever that will destroy the tree growth. (L. 1901, p. 188, sec. 9; sec. 2634, R. S. 1908, p. 744.)

Sec. 36. No unguarded fire allowed.—No open fires not sufficiently guarded to prevent spreading shall be allowed in any forest area in this state, and all live coals emptied from any stove or remaining from any open fire shall be at once and completely extinguished with water before leaving. (L. 1901, p. 188, sec. 10; sec. 2635, R. S. 1908, p. 744.)

Sec. 37. Camping permit—Fee.—No person, party or parties, shall be allowed to camp, either for business or pleasure, in any forest district of this state outside of the county in which they legally reside, without first taking out a permit so to do. Such permit shall bear such part of this act as relates to fires and their care, and shall be issued by the clerk of any county court within

the state upon the payment of the sum of fifty cents as a fee. Permits must at all times be produced and shown to any game or forest warden, land appraiser, constable, sheriff, or other official empowered by law to demand the same, and such permit may be taken up by such warden, land appraiser or other official whenever the holder thereof shall wilfully violate the provisions of this act. (L. 1901, p. 188, sec. 11; sec. 2636, R. S. 1908, p. 744.)

Sec. 38. **Non-residents obtain services of warden.**—Non-residents of this state shall not camp within the forest districts for pleasure until they shall have obtained the services, at their own cost, of a game or forest warden as conservator of the state's interests, and such warden will be held strictly responsible for the care and prevention of fires from extending to the forest areas. (L. 1901, p. 188, sec. 12; sec. 2637, R. S. 1908, p. 745.)

Sec. 39. **Arrest of violators.**—Game and forest wardens, the land appraisers, and all peace officers of the state, are hereby charged with the enforcement of this act so far as it relates to fires in forest areas, and shall have full power to arrest, with or without warrant, all violators and deliver them to the nearest constable or sheriff, to be dealt with according to law. (L. 1901, p. 189, sec. 13; sec. 2638, R. S. 1908, p. 745.)

Sec. 40. **Fires caused by railroads—Damages.**—The right of way of any railroad within the forest areas of this state shall be kept free from inflammable material, and every locomotive used in such forest area shall be so equipped and operated as to prevent the setting on fire of any tree growth along or adjacent to such right of way. Any destruction caused by a violation of this section of this act shall be appraised by the appraiser of the state board of land commissioners, and if the appraised value of such destruction is not paid by the offending railroad company within ninety days of such appraisement, then and in that case the state board of land commissioners shall bring suit in the name of the state to recover all damages, losses and costs caused by or arising out of the wrongful acts or negligence of the offending railroad company. The measure of damages shall consist of not only the actual commercial value of the trees destroyed, but also their value as conservators of the snows, ice or irrigation waters contemplated in this act and promoters of adjacent tree growth. Each day's neglect to properly equip and operate as herein directed any locomotive shall be deemed a separate offense, punishable in like manner and with like penalties. The provisions of this section of this act shall take effect and become operative on and after the first day of July, A. D. 1901. (L. 1901, p. 189, sec. 14; sec. 2639, R. S. 1908, p. 745.)

[See also sections 5509-5512, R. S. 1908.]

Sec. 41. Deputy appraisers—Duties—Compensation.—For the purpose of more fully carrying out the provisions of this act the state board of land commissioners are hereby empowered to employ such number of persons, not exceeding six, as in their judgment are necessary. Such persons shall be known as deputy appraisers. They shall receive for their services the sum of five (5) dollars per diem, and shall have authority to arrest all violators of this act, with or without warrant, and deliver them to the most accessible justice of the peace or other officer authorized by law to act in such cases. (L. 1901, p. 189, sec. 15; sec. 2640, R. S. 1908, p. 745.)

Sec. 42. Penalty for violation of act—Damage suit.—Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of not less than twenty-five nor more than one hundred dollars or by imprisonment of not less than fifteen days nor more than sixty days or by both fine and imprisonment as the court may direct. Suit may also be brought in the name of the state for damages arising from fires destroying the timber or the trees of the state whenever such damage has been caused by any violation of the provisions of this act by any person or persons engaged in any business or pleasure pursuit whatever. (L. 1901, p. 190, sec. 16; sec. 2641, R. S. 1908, p. 745.)

[This act comprises sections 27 to 43.]

Sec. 43. District attorneys prosecute.—The district attorneys of the various judicial districts of the state are hereby directed to prosecute in the name of the state all cases arising under this act. (L. 1901, p. 190, sec. 17; sec. 2642, R. S. 1908, p. 745.)

Sec. 44. Guard lines to protect forests from fires.—Any person who shall start or cause or suffer to be started any fire on his own premises or elsewhere, in or near any woodland, forest or prairie, without having first prepared a good and sufficient guard line, by ploughing or otherwise around the place where the fire is to be started, sufficient to prevent the spreading of fire beyond the guard line, shall be deemed guilty of a misdemeanor. All camp fires must be totally extinguished before breaking camp. (L. 1897, p. 39, sec. 11; sec. 2652, R. S. 1908, p. 747.)

[Penalty for failure to extinguish camp fire. Section 1879, R. S. 1908.]

[See also sections 1876 and 2737, R. S. 1908.]

[For recovery of damages from fire see section 2070, R. S. 1908.]

[Guard lines maintained by railroad. Section 5509, R. S. 1908.]

Sec. 45. Misdemeanor to maliciously set fire.—Any person who shall wilfully or maliciously set on fire, or cause or suffer to be set on fire, any woods, prairie or ground of any description, other than his own, or who shall intentionally or by neglect permit any destructive fire to pass from his own ground, shall be

deemed guilty of a misdemeanor. (L. 1897, p. 40, sec. 12; sec. 2653, R. S. 1908, p. 747.)

Sec. 46. Misdemeanor to remove coniferous growth.—Any person who shall cut or remove any coniferous growth from the public lands, or state lands, with the intent to ship or sell the same outside the state, shall be deemed guilty of a misdemeanor, but this provision shall not apply to the transplanting of trees for ornamental purposes. (L. 1897, p. 40, sec. 13; sec. 2654, R. S. 1908, p. 747.)

[The remaining sections of the act of 1897 refer to game and fish and are superseded by the laws of '99, pp. 184-222, sections 2725 to 2893, R. S. 1908.]

[Quaere. Are sections 2643 to 2654, R. S. 1908, repealed by the forestry act, L. '01, pp. 185-190, sections 2626 to 2642, R. S. 1908, and Game and Fish chapter, sections 2725 to 2753 of R. S. 1908?]]

Sec. 47. State board of agriculture given authority as state board of forestry—Appoint state forester.—That the state board of agriculture shall have, and hereby is vested with authority, in addition to and in connection with its duties heretofore provided, as a state board of forestry, and the said the state board of agriculture is hereby given authority to appoint an officer to be known as the state forester. The incumbent in said office to be the professor or instructor of forestry at the State Agricultural College, said state forester to hold office at the will of the state board of agriculture and except as hereinafter provided, to be under the control of the state board of agriculture. The state board of agriculture is further hereby authorized to furnish the necessary office, furniture, office supplies, stamps and postage, and office and field equipment, and such necessary assistance as may be required for the proper conduct of the office of state forester. (S. L. 1911, p. 419.)

Sec. 48. Salary.—The state forester shall receive a reasonable salary, to be fixed by the state board of agriculture, not to exceed \$2,500.00 per year, which sum shall include his salary as professor or instructor of forestry at the State Agricultural College, and shall be paid out of the money hereby appropriated. (S. L. 1911, p. 420.)

Sec. 49. Duties—Forest fires.—It shall be the duty of the state forester to direct the management of state forest reserves, if any; to collect and publish all data relative to the forests and other timber growing in the state, to co-operate, so far as is practical, with the Department of Forestry of the United States government; to promulgate and publish rules for the prevention of forest fires and to cause the same to be posted in the forests upon state lands; to study the best conditions for preserving and growing of trees and forests. (S. L. 1911, p. 420.)

Sec. 50. Co-operate with state board of land commissioners.—The state forester shall co-operate with the state board of land commissioners in the matter of granting of permits for cutting timber upon state lands, giving them data concerning the proper timber to be cut and the proper method of cutting and removing the timber and the removal of the strippings and advising the state board of land commissioners concerning any matters of importance relative to the removal of the timber and the replanting and reforestation of state lands, but nothing herein contained shall be construed as amending the law at present existing giving the state board of land commissioners authority in said matter. (S. L. 1911, p. 420.)

Sec. 51. Advise and assist in extinguishing forest fires.—The state forester shall advise, aid and assist in preventing and extinguishing forest fires on state lands and private lands and in the national forests in the state, but nothing herein contained shall be construed as amending the law making it the duty of the sheriffs of the various counties of the state to prevent and extinguish forest fires. (S. L. 1911, p. 420.)

Sec. 52. May advise and assist in planting trees.—The state forester may advise or assist any individual, individuals, association or corporations, towns or cities, and examine any tract of land that it may be desired to devote to the growing of trees or forests, to advise as to the planting thereof and the protection, preservation or reforestation of any private lands under an agreement with the owners of such land, whereby the owner or owners of such land shall pay to the state board of agriculture a sum equal to the total expense of the state forester or such assistants as may be appointed for said purpose. (S. L. 1911, p. 420.)

Sec. 53. Sheriffs report fires to state forester.—It shall be the duty of the sheriffs of the various counties of the state to report as soon as practical the occurrence of any fire in any forest or forests in the state, either on private or public lands, and upon receiving notice from any source of a fire or fires in any forest, it shall be the duty of the state forester to aid and assist in extinguishing the same. (S. L. 1911, p. 421.)

Sec. 54. Examine cause of fires.—It shall be the duty of the state forester to examine and inquire into the cause of fires occurring in the forests of the state, either on private or public lands, to prosecute violation of all laws pertaining to fires or the cutting or destruction of timber in the state, and report to the proper authority, any violation or dereliction on the part of any officer or officers of the state with relation to fires and in relation to the timber or forests in the state. (S. L. 1911, p. 421.)

Sec. 55. **Game and fish commissioner post notices.**—It shall be the duty of the commissioner of game and fish to have posted, in manner as required by the state forester, all notices prepared by the state forester concerning the prevention and extinguishing of forest fires. (S. L. 1911, p. 421.)

Sec. 56. **Penalty for defacing notices.**—Any person who removes, injures or defaces any sign or signs placed or maintained in pursuance of section 9 shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not to exceed \$25.00 and costs of prosecution, or imprisonment, not to exceed thirty days in the county jail, or both, at the discretion of court. (S. L. 1911, p. 421.)

Sec. 57. **Make report to governor.**—Said state forester shall, biennially, make to the governor, a report of the transactions of his office, and shall make such recommendations as he shall deem necessary with a view toward prescribing laws necessary to make his office an effective factor for the purposes for which it is created. (S. L. 1911, p. 421.)

Sec. 58. **Appropriation.**—There is hereby appropriated, for the biennial period of 1911 and 1912, out of any funds in the state treasury not otherwise appropriated, the sum of ten thousand (\$10,000.00) dollars for the purpose of carrying into effect the provisions of this act, and there is hereby appropriated, for each successive biennial period, the said sum of ten thousand (\$10,000.00) dollars for such purposes, and the auditor of state is hereby authorized to draw his warrants upon said funds, upon the order of the state board of agriculture, signed by its president and countersigned by its secretary. (S. L. 1911, p. 421.)

STATE CANALS AND RESERVOIRS AND THE CONTROL THEREOF.

Sec. 59. **Board of control canal No. 1—Duties.**—There is hereby created a board to be known as "The board of control of state canal No. 1 and reservoirs connected therewith." The said board shall be composed of the lieutenant governor, who shall be chairman, the state engineer and the warden of the penitentiary. The secretary of the state board of land commissioners shall be secretary of said board of control. Said board is hereby charged with the duty of securing the early completion of state canal No. 1, and reservoirs connected therewith and of the operation and

maintenance of the same as herein provided. (L. 1893, p. 441, sec. 1; sec. 3505, R. S. 1908, p. 927.)

The act of 1893 held partly constitutional and partly unconstitutional. *In re Canal Certificates.* 19 Colo., 65; 34 Pac., 275.

[Sections 2-7 of the above act have performed their function and are therefore not printed.]

Sec. 60. Board of land commissioners assume control.—Upon completion of said canal and its acceptance and approval, as hereinbefore provided, the said board of control of state canal No. 1 and reservoirs connected therewith, shall turn over the said canal, together with all drawings, specifications, reports and records pertaining to said canal and the action of said board of control, to the state board of land commissioners; whereupon the state board of land commissioners shall assume control of said canal and shall thereafter control, operate and maintain the same subject to such provisions of law as may hereafter be made and established. (L. 1893, p. 445, sec. 8; sec. 3506, R. S. 1908, p. 927.)

[See also section 63.]

Sec. 61. Use of water—Lease of lands.—It shall be the duty of the state board of land commissioners to cause the waters carried in the state canal No. 1 and reservoirs connected therewith to be applied to the irrigation of the state lands and all other lands lying under said canal at the earliest convenient and practicable times, and as a means among others to effect such use of water, the board of land commissioners are authorized to offer numerous portions of said lands for lease at such reasonable prices, and for such periods, not exceeding twenty years, as will be conducive to the rapid settlement of such lands and the early use of such waters. (L. 1893, p. 445, sec. 9; sec. 3507, R. S. 1908, p. 927.)

Sec. 62. Rights and powers of board of control.—The said board of control of state canal No. 1 and reservoirs connected therewith is here given all the rights and powers that an individual or corporation now has, or may hereafter have, under the laws of the state, or of the United States, to acquire the right of way over, upon and to any lands necessary for it to use or occupy in the construction and maintenance of such canal. (L. 1893, p. 445, sec. 10; sec. 3508, R. S. 1908, p. 927.)

Sec. 63. Establish annual charges for carriage of water.—It shall be the duty of the state board of land commissioners to establish from time to time reasonable annual charges for the carriage of waters or sell perpetual rights of water if deemed by it more expedient. (L. 1893, p. 446, sec. 11; sec. 3509, R. S. 1908, p. 927.)

[Is the above section superseded by section 69?]

Sec. 64. Title to canal in state.—The title to the said canal shall vest and remain with the state of Colorado, and any money received for the carriage of water therein shall be devoted to the maintenance and operation of such canal, and surplus over and above the cost of operation, and maintaining such canal, shall be converted into the state treasury and applied by the state treasurer to meeting the certificates of indebtedness herein provided for and interest thereon. (L. 1893, p. 446, sec. 12; sec. 3510, R. S. 1908, p. 928.)

Sec. 65. Board construct laterals.—It shall be the duty of the said board of land commissioners to construct from time to time and as rapidly as may seem to such board advisable, lateral ditches and the necessary appurtenances thereto, for supplying the lands of the state lying under said canal with water for irrigation, and to see that all of such lands belonging to the state are brought under cultivation within a reasonable time. (L. 1893, p. 446, sec. 13; sec. 3511, R. S. 1908, p. 928.)

Sec. 66. Certificates received in lieu of money for charges.—Any receipts or certificates heretofore issued in return for subscriptions and advancement of money by persons owning land along the line of state canal No. 1, and reservoirs connected therewith shall be received in lieu of money for the lawful and reasonable charges for the carriage of water in the said canal, and all of the certificates hereafter issued as in said canal or for perpetual water rights thereunder. (L. 1893, p. 446, sec. 14; sec. 3512, R. S. 1908, p. 928.)

Insofar as this act provided for the payment of lands purchased from the State by certificates of indebtedness issued for the construction of the canal, it was unconstitutional. *In re canal certificates.* 19 Colo., 64, 70; 34 Pac., 274.

Sec. 67. State board of control have traveling expenses.—The members of the state board of control of state canal No. 1, and reservoirs connected therewith shall be entitled to their reasonable traveling expenses while performing the duties herein laid upon them for which amounts the auditor shall draw warrants upon the state treasurer, when such amounts shall be duly certified to him by the secretary of the said board of control. (L. 1893, p. 446, sec. 15; sec. 3513, R. S. 1908, p. 928.)

Sec. 68. Land board control ditches and reservoirs.—Until otherwise authorized by law, the board of land commissioners is hereby directed to regulate the distribution of water from state canals and reservoirs under such rules and regulations as said board shall deem to be for the best interests of the state. "And

to charge and collect rental for the carriage of water therein." (L. 1893, p. 404, sec. 1; sec. 3561, R. S. 1908, p. 934.)

[Is this section superseded by section 69?]
[See sections 60 and 63.]

Sec. 69. County control of reservoirs.—The board of county commissioners of any county wherein is situated any state reservoir, shall have charge and control of such reservoir and shall, without expense to the state of Colorado, maintain and keep said reservoir in good condition and provide for the storage of water as contemplated in the act providing for the construction of said reservoir, and also for the distribution of said water under the direction of the water commissioner for the district in which said reservoir is situated, at such times as the scarcity of water in the stream which such reservoir is intended to reinforce demands that the water in said stream should be replenished for the purpose of irrigating the lands under ditches now or hereafter to be constructed; *Provided*, That said waters shall be distributed by said water commissioner pro rata without reference to priority of water rights and without expense to consumers thereof; *And, provided, also*, That the counties in which said reservoirs are situated assume and shall be held responsible for any damages resulting from breakage of the dams or water discharges therefrom; *And, provided, further*, That the provisions of this act shall not apply to any state reservoir constructed primarily for the purpose of irrigating state lands, but any such reservoir shall remain in the control of the state board of land commissioners. (L. 1899, p. 350, sec. 1; sec. 3562, R. S. 1908, p. 934.)

DESERT LANDS

Sec. 70. Acceptance of congressional grant.—That the state of Colorado hereby accepts the conditions of section 4 of an act of Congress, entitled "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1894," together with all acts amendatory thereto, including the amendatory acts of Congress of June 11, 1896, March 3, 1901, March 1, 1907, February 24, 1909, and March 15, 1910, together with all grants of land made or to be made under the provisions of the aforesaid acts. (Ch. 119, S. L. 1911, p. 303.)

[Section 4 above referred to is found in 28 Stat. L., p. 422, section 4.]

Sec. 71. State board of land commissioners to have selection, management and disposal of such lands.—That the selection, management and disposal of said land and all such lands as may hereafter be granted to the state of Colorado by the United States

shall be vested in the state board of land commissioners of the state of Colorado, as now or hereafter constituted, and that said board is hereby empowered to accept all moneys upon the part of the state of Colorado from the purchasers of said land, and to place the same in a fund to be designated as the "Carey Act Fund," and to disburse the same as in this chapter provided; and is empowered to accept from the settlers, filing on said lands under the provisions of said acts within the former Southern Ute and Ute Indian reservations, as defined in the said amendatory acts of Congress of March 1, 1907, and February 24, 1909, the sum of one dollar and twenty-five cents (\$1.25) per acre for each acre thereof to be patented, and to pay the same into the treasury of the United States. And the said board is hereby authorized to accept any and all future grants of such lands by the United States to this state, and to agree to and accept on behalf of the state any and all conditions that may be imposed by the United States in relation thereto; provided, however, that said board shall report to each regular session of the legislature hereafter its acceptance of the provisions of any such acts, if any, since the next preceding session. (Ch. 119, S. L. 1911, p. 303.)

Sec. 72. Selection, management and disposal of lands.—The selection, management and disposal of said land shall be vested in the state board of land commissioners.

Sec. 73. The person, company of persons, associations or incorporated companies, making application to the board for the selection of lands by the state, shall have filed with the state engineer an application to appropriate water for the reclamation of the lands described in the request to the board. This application shall be of a form prescribed by the state engineer, and shall be accompanied by two copies of the map of the land to be selected and which shall show accurately the location and dimensions of the proposed irrigation works; the maps of the lands and proposed irrigation shall be prepared in accordance with the regulations of the state engineers' office and rules of the Department of the Interior. (Ch. 120, S. L. 1911, p. 304.)

Sec. 74. Request for selection of lands—Proposal to construct ditches—Requirements.—Any person, company of persons, associations or incorporated company desiring to construct ditches, canals or other irrigation works to reclaim land under the provisions of this act, shall file with the board a request for the selection on behalf of the state by the board of the land to be reclaimed, designating said land by legal subdivisions. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the land asked to be selected. The proposal shall be

prepared in accordance with the rules of the board, and with the regulations of the department of the interior. It shall state the postoffice address and residence of the parties, the source of water supply, the point of diversion, the place of storage, if stored, the location and dimensions of the proposed works, the estimated cost thereof and the carrying capacity of the ditch or canal, the price and terms at which perpetual water rights will be sold to settlers on the land reclaimed, said perpetual right to embrace a proportionate concurrent interest in the ditch, canal or other irrigation works, together with all rights and franchises attached thereto, and all water rights sold or otherwise held under said ditch or canal to have equal rights as to priority; which said proportionate concurrent interest may be either in the form of shares of stock in a company which will ultimately own and control the works, or in the form of water right deeds or contracts, as may be determined by the board; and all contracts for the sale of water rights under this act shall be in the form, and upon conditions, approved by the board. In the cases of incorporated companies it shall state the name of the company, the purpose of the incorporation, the name and places of residence of its directors and officers, the amount of its authorized and of its paid up capital, and shall be organized under the laws of Colorado. If the applicant is not an incorporated company, the proposal shall set forth the name or names of the party or parties, and such other facts as will enable the board to determine his or their financial ability to carry out the proposed undertaking, or as may be required by the board.

Nothing herein shall be construed to prevent the entry and reclamation of land under this act by individuals duly qualified either singly or acting together, and the state board of land commissioners shall make such rules and regulations not inconsistent with said act of congress, or the rules and regulations of the department of the interior, as may be necessary to allow the acquirement of individual water rights for application to, and reclamation of specific tracts of land, not exceeding one hundred and sixty acres of land for each person, and the requirements of this act as to plats, maps, examinations, reports, bonds and contracts may, by such rules and regulations be so modified as to effectuate and assist the reclamation and entry of land by individuals. (Ch. 120, S. L. 1911, p. 304.)

Sec. 75. Record of proceedings of land board.—The register of the land board shall act as secretary, and it shall be his duty to keep a careful record of the transactions of the board in substantially bound book or books, to be kept for that purpose, and which shall be known as the record and proceedings of the state

board of land commissioners under this act. (L. 1895, p. 157, sec. 3; sec. 5140, R. S. 1908, p. 1209.)

Sec. 76. Duties and powers of register.—The register of the land board shall have the custody of the records of the board; shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this act, prepare and keep for public inspection maps and plats on a scale of two inches to the mile of all lands selected, receive entries of settlers on these lands and hear or receive the final proof of their reclamation under the rules and regulations to be prescribed by the state board of land commissioners, and do any and all work required by the board in carrying out the provisions of this act. He shall have authority to administer oaths whenever necessary in the performance of his duties as register and secretary of the board. (L. 1895, p. 157, sec. 4; sec. 5141, R. S. 1908, p. 1209.)

Sec. 77. Certified check shall accompany proposal.—A certified check payable to the state board of land commissioners for a sum of not less than two hundred and fifty (250) dollars and not more than two thousand five hundred (2,500) dollars, as may be determined by the rules of the board, shall accompany each such request and proposal, the same to be held as a guarantee of the execution of the contract with the state, in accordance with its terms, by the party submitting such proposal, in case of the approval of the same and the selection of the land by the board, and to be forfeited to the state in case of failure of said parties to enter into a contract with the state, in accordance with the provisions of this act. (L. 1895, p. 158, sec. 6; sec. 5143, R. S. 1908, p. 1210.)

Sec. 78. Examination of proposal — Report. — Immediately upon the receipt of any request and proposal as designated in section five (5), it shall be the duty of the secretary of the board to examine the same and ascertain if it complies with the rules of the board and the regulations of the department of the interior. If it does not, it is to be returned for correction; but if it does so comply, it shall be submitted to the state engineer, who shall examine the same and make a written report to the board, stating whether or not the proposed works are feasible; whether the proposed diversion of the public waters of the state will prove beneficial to the public interest; whether there is sufficient unappropriated water in the source of supply, and whether or not a permit to divert, store and appropriate water through or by the proposed works has been approved by him; whether the capacity of the proposed works is adequate to reclaim the land described; and whether or not the maps filed in his office comply with the re-

quirements of said office, and the regulations of the department of the interior; also, whether or not the lands proposed to be irrigated are desert in character and such as may properly be set apart under the provisions of the aforesaid act of congress, and the rules and regulations of the department of the interior thereunder. Whenever the state engineer shall be unable, from an examination of the maps and filed notes submitted for his examination, to determine whether or not the proposed irrigation works are feasible and adequate, or whether or not the proposed diversion of the public water is beneficial to public interest; and whether or not the lands proposed to be irrigated are of such a character as to come under the provisions of the aforesaid act of congress, he shall so report to the board and also report the estimated cost of a survey and examination; and it shall be his duty to make, or cause to be made, by some qualified assistant, such survey or examination as will enable him to report intelligently thereon to the board, when directed by said board to make such examination or survey. (L. 1895, p. 160, sec. 8; sec. 5145, R. S. 1908, p. 1210.)

Sec. 79. Board consider proposal—Request for withdrawal of land.—On receipt of the report of the state engineer, the register shall place the request and proposal, with the engineer's report thereon, before the board for its consideration. In case of approval the board shall instruct the register to file in the local land office a request for the withdrawal of the land described in said proposal. No request on which the state engineer has reported adversely, either as to the water supply, the feasibility of the construction, or capacity of the works, or as to the character of the lands sought to be irrigated, shall be approved by the board. (L. 1895, p. 161, sec. 9; sec. 5146, R. S. 1908, p. 1211.)

Sec. 80. Notice of rejection of proposal—Second proposal.—In case the state engineer shall report adversely upon the proposed irrigation works, or where requests and proposals are not approved by the board, the board shall notify the parties making such proposal of such action and the reasons therefor. The parties so notified shall have sixty (60) days in which to submit another proposal; but the board may, at its discretion, extend the time to six (6) months. (L. 1895, p. 161, sec. 10; sec. 5147, R. S. 1908, p. 1211.)

Sec. 81. Contract between state and parties submitting proposal—Bond.—Upon the withdrawal of the land by the department of the interior, it shall be the duty of the board to enter into a contract with the parties submitting the proposal, which contract shall contain complete specifications of the location,

dimensions, character and estimated cost of the proposed ditch, canal or other irrigation work, and state the price and terms upon which the state is to dispose of the lands to settlers, and such other conditions and provisions as the board may direct. This contract shall not be entered into on the part of the state until the withdrawal of these lands by the department of the interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bond shall be in a penal sum equal to five (5) per cent. of the estimated cost of the works, and to be conditioned for the carrying out of the provisions of the contract with the state. (L. 1895, p. 161, sec. 11; sec. 5148, R. S. 1908, p. 1211.)

Sec. 82. Proposal not considered which requires more than five years for construction—One-tenth must be completed in two years—Construction must be prosecuted diligently—Cessation of work for six months, without sanction of board, work a forfeiture—Board may extend time—Must give thirty days' notice through newspapers.—No proposal shall be considered by the board which requires a greater time than five years for the construction of the works, and all proposals shall state that the work shall begin within six months from the date of contract, that at least one-tenth of the construction work shall be completed within two (2) years from the date of said contract; that the construction shall be prosecuted diligently and continuously to completion, and that a cessation of work under the contract with the state for a period of six (6) months after the second year, without the sanction of the board, will forfeit to the state all rights under said contract; *Provided*, That the board shall for good cause shown extend the time of beginning or of completing the whole or any part of said construction work for a period commensurate with the difficulties of construction and the location of the proposed project. *Provided, further*, That no extension of time shall be granted until after thirty days' notice, given by publication in at least one daily paper, published at the capital, and in at least one paper, published in each county in which the project and the land sought to be watered thereby is located, of the time and place where such extension of time will be considered and opportunity afforded to all interested parties to appear and be heard therein. (Ch. 118, S. L. 1911, p. 301.)

Sec. 83. Failure to begin or complete within specified time—Notice in writing by register—Advertise sale of such forfeited works—Time for receiving bids—Expenses of state board paid out of receipts from sale first—Surplus paid to original contractors.—Upon the failure of any parties, having contracts with the state for the construction of irrigation works, to begin the

same within the time specified by law or to carry on said work as in their contract provided, or to complete the same within the time or in accordance with the specifications of the contract with the state land board and the provisions of this act, it shall be the duty of the register to give such parties written notice of such failure; *Provided*, however, That in the event the board has extended the time of the beginning or of completing the whole or any part of said construction work beyond the time set forth in the said contract between the state of Colorado and the party submitting the proposal, then the conditions and penalties of this section shall not apply to or be enforceable against the said parties constructing the project until the time of said extension or extensions have expired; and if, after a period of sixty (60) days they have failed to proceed with the work or to conform to the specifications and conditions of their contract with the state, it shall be the duty of the state land board to declare the bond and contract of such parties forfeited to the state, and notify the contractors by letter to the address given in the proposal, and to give notice once a week, for a period of four weeks, in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital, and in like manner and for a like period, of the forfeiture of said contract; and that upon a day fixed, proposals will be received at the office of the register, at the capitol at Denver, for the purchase of the incompleted works and for the completion of said contract. The time for receiving said bids to be at least sixty (60) days after the issuing of first notice of forfeiture. The money received from the sale of partially completed works under the provisions of section 12 of this act, shall first be applied to the expense incurred by the state in their forfeiture and disposal, to satisfying the bond, and to the satisfaction, pro-rata of the adjudicated liens for labor or materials; and the surplus, if any exists, shall be paid to the original contractors with the state. (Ch. 118, S. L. 1911, p. 300.)

[Section 12 referred to is section 82.]

Sec. 84. State not to be made liable.—Nothing in this act shall be construed as authorizing the board to obligate the state to pay for any work constructed under any contract, or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state. (L. 1895, p. 163, sec. 14; sec. 5151, R. S. 1908, p. 1212.)

Sec. 85. Notice that land is open for settlement.—Immediately upon the withdrawal of any land for the state by the department of the interior, and the inauguration of work by the

contractors, it shall be the duty of the board, by publication once each week, in one newspaper of the county in which said lands are situated; and in one newspaper at the state capital for a period of four weeks; to give notice that said land is open for settlement, and the price and terms upon which said land will be sold to settlers by the state. (L. 1895, p. 163, sec. 15; sec. 5152, R. S. 1908, p. 1212.)

Sec. 86. Application to enter—Requirements—Payment of purchase price.—Any citizen of the United States, or any person having declared his intention to become a citizen of the United States, over the age of twenty-one years, may make application, under oath, to the board, to enter any of said land in an amount not to exceed one hundred and sixty (160) acres for any one person; and such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of congress, and the laws of this state relating thereto; and that the applicant has never received the benefit of the provisions of this act, to an amount greater than one hundred and sixty (160) acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application, with the person, company or association who have been authorized by the board to furnish water for the reclamation of said lands; and if said applicant has at any time entered land under the provisions of this act he shall so state in his application, together with description, date of entry and location of said land. The board shall file in its office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of twenty-five cents per acre, which shall be paid as a partial payment on the land if the application is allowed; and all certificates, when issued, shall be recorded in a book to be kept for that purpose. If the application is not allowed, the twenty-five cents per acre accompanying it shall be refunded to the applicant. The board shall dispose of all lands accepted by the state under the provisions of this act at a uniform price of fifty cents per acre, half to be paid at the time of entry and the remainder at the time of making final proof by the settler. (L. 1895, p. 163, sec. 16; sec. 5153, R. S. 1908, p. 1212.)

Sec. 87. Disposition of funds.—As provided in the act of congress, all moneys received by the board from the sale of lands selected under the provisions of this act shall be deposited with the state treasurer, and such sums as may be necessary shall be

available for the payment of the expenses of the board and of the state engineer's office incurred in carrying out the provisions of this act. Such expenses shall be paid by the state auditor in the manner provided by law, upon vouchers duly approved by the board for the work performed under its direction, and by the state engineer for all work performed by the state engineer's office; and any balance remaining over and above the expense necessary to carry out the provisions of this act shall constitute a trust fund in the hands of the state treasurer, to be used for the reclamation of other desert lands. (L. 1895, p. 164, sec. 17; sec. 5154, R. S. 1908; p. 1213.)

Sec. 88. Duty of settler—Proof of settler—Final payment—Patent.—Within one year after any person, company of persons, association or incorporated company, authorized to construct irrigation works under the provisions of this act, shall have notified the settlers under such works that they are prepared to furnish water under the terms of their contract with the state, the said settlers shall cultivate and reclaim not less than one-sixteenth part of the land filed upon, and within two years after the said notice, the settler shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within three years from the date of said notice, the settler shall appear before the register, or a judge or clerk of the district court, or judge of the county court, in the county in which such land is situated, as designated by the register, and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he has a perpetual water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he is an actual settler thereon; and has cultivated and irrigated not less than one-eighth part of said tract, and such further proof, if any, as may be required by the regulations of the department of the interior or the board. The officer taking this proof shall be entitled to receive a fee, to be fixed by the state board of land commissioners, which fee shall not exceed five (5) dollars and be paid by the settler and shall be in addition to the price paid to the state for the land. All proofs so received shall be submitted by the register to the board and shall be accompanied by the last final payment for said land, and, on the approval of the same by the said board, they shall be forwarded to the secretary of the interior, with a request that a patent to said lands be issued to the state; *Provided*, That whenever the state of Colorado through its state board of land commissioners, can make proof that such irrigation works have been completed for the reclamation of the lands so segregated, and that an ample supply of water is actually furnished in a sub-

stantial ditch or canal or by artesian wells or reservoirs, for such purpose, said board shall apply for a patent to such lands, in the manner provided by the regulations of the department of the interior and in accordance with the provisions of the acts of congress relating thereto, without waiting for settlement or cultivation of such lands. (L. 1907, p. 366, sec. 1; amending L. 1895, p. 165, sec. 18; sec. 5155, R. S. 1908, p. 1213.)

Sec. 89. Patent—Lien for deferred water payments—Foreclosure—Sale—Deed.—Upon the issuance of a patent to any lands by the United States to the state, notice shall be forwarded to the settler upon such land. It shall be the duty of the board, under the signature of its president and attested by its secretary, to issue a patent to said lands from the state to the settler. All water rights acquired under the provisions of this act shall attach to and become appurtenant to the land as soon as the title passes from the United States to the state. Any person, company or association furnishing water for any tract of land shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired; the contract for the water right upon which the aforesaid lien is founded to be recorded in the office of the county clerk of the county where said land is situate. That upon default of any of the deferred payments secured by any lien under the provisions of this act, the person, company of persons, association or incorporated company holding or owning said lien, may foreclose the same according to the terms and conditions of the contract granting and selling to the settler the water right; all sales to be advertised in a newspaper of general circulation, published in the county where said land and water right is situate, for six (6) consecutive weeks, and to be sold to the highest bidder at the front door of the court house of the county, or such place as may be agreed upon by the terms of the aforesaid contract; and the sheriff of said county to give all notices of sale and to sell all property, and to make and execute a good and sufficient deed to the purchaser thereof hereinafter provided. And at such sale no person, company of persons, association or incorporated company, owning or holding any lien, shall bid in or purchase any land or water right at a less price than the amount due on said deferred payment for said water right and land, and the costs incurred in making the sale of said land and

water right. The sheriff shall execute a certificate of sale as in case of sale of an execution subject in all respects to redemption as in such case; and if not redeemed the sheriff shall execute a deed as upon sale on execution. (L. 1895, p. 166, sec. 19; sec. 5156, R. S. 1908, p. 1213.)

[Certificate of sale and sheriff's deed, sections 3642-3644, R. S. 1908.]

Sec. 90. Requirements of maps.—The maps of the lands selected under the provisions of this act shall show the location of the canals or other irrigation works approved in the contract with the board, and all lands filed upon shall be subject to the right of way of such canals or irrigation works; said right of way to embrace the entire width of the canal and such additional width as may be required for its proper operation and maintenance, the width of right of way to be specified in the contracts provided for in this act. (L. 1895, p. 167, sec. 20; sec. 5157, R. S. 1908, p. 1214.)

Sec. 91. Rules and regulations—Maps and contracts—Annual report of construction company.—The board shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the entry and payment of the land by settlers, and for the forfeiting of entry by settlers upon failure to comply with the provisions of this act. There shall be kept in the office of the board, for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of land by settlers. It shall require from each person, company of persons, association or incorporated company engaged in the construction of irrigation works, under the provisions of this act, an annual report, to be submitted to the board on or before the first day of November of each year, this report to show the number of water rights sold, the number of users of water under said irrigation works, the legal subdivisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works is prepared to supply with water, and such other data as the board sees fit to require. The rules required by this section may be waived in the case of irrigation works being constructed by a person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves. (L. 1895, p. 167, sec. 21; sec. 5158, R. S. 1908, p. 1214.)

Sec. 92. Duties of employes—Fees—Fee book.—The board shall prescribe the duties of all its employes, and shall collect the following fees:

For filing each application, one dollar; for filing each proof, one dollar; for issuing each patent, one dollar; for making certi-

fied copies of papers or records, the same fee as provided for to be charged by the secretary of state for like services.

And a fee book shall be kept by the register, showing all fees received by him from any source whatever. The money collected for fees shall be paid to the treasurer of the state and by him credited to the fund created by virtue of this act. (L. 1895, p. 168, sec. 22; sec. 5159, R. S. 1908, p. 1214.)

[Fees of secretary of state for copies. Section 2519, R. S. 1908.]

Sec. 93. Report of board concerning work.—The board shall issue, on or before the thirtieth day of November of each year, a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal sub-divisions of land, intended to be reclaimed, the estimated cost of said irrigation works, the price of water rights from such irrigation works, and the terms of payment for both water rights and land. Not less than one thousand copies of such report shall be printed for gratuitous distribution. (L. 1895, p. 168, sec. 23; sec. 5160, R. S. 1908, p. 1214.)

IRRIGATION DISTRICTS, COLLEGE AND SCHOOL LANDS

Sec. 94. Agricultural college and public school lands to be included in water districts.—For the purpose of furnishing water and securing water rights for agricultural college and public school lands, lying within or adjacent to the boundaries of any irrigation district now organized, or which may hereafter be organized, the state board of land commissioners is hereby authorized to petition all such lands into such irrigation districts. (Ch. 178, S. L. 1909, p. 429.)

Sec. 95. Form and requirements of petition.—All such petitions shall be in the form now provided by law for the petition of other lands into such irrigation districts, and shall be signed, sealed and acknowledged by the register of the state board of land commissioners, on behalf of said board, and shall in addition be countersigned by the governor of the state, on behalf of the state, and when so signed, sealed, acknowledged and filed with the board of directors of any irrigation district, shall be deemed to give the assent of said state board of land commissioners and the state of Colorado to the inclusion of all lands therein described in said irrigation district. (Ch. 178, S. L. 1909, p. 429.)

Sec. 96. Assessments.—All such lands so included in any irrigation district in this state, shall be assessed for irrigation dis-

strict purposes in the same manner and at the same rate as other lands in such irrigation districts. (Ch. 178, S. L. 1909, p. 430.)

Sec. 97. Duties, county treasurer—Register of land board—Manner of payment.—It shall be the duty of the county treasurer of each and every county in this state wherein any irrigation district is located, and in which such lands have been so included, to notify the register of the state board of land commissioners, on or before the first day of February of each and every year of the amount of district assessments due on such lands, giving therein the exact description of each tract of land so assessed and the amount of assessments due thereon. Immediately upon receiving such notice it shall be the duty of the register of said state board of land commissioners to place the same before said board at their next regular meeting, who shall examine said notice of assessments due, and if the same be found correct, they shall certify the same to the state treasurer who shall pay the same out of any of the monies in his hands belonging to said respective land funds howsoever derived, and charge the same to said respective funds. Such payment shall be by warrant from the state treasurer to the proper county treasurer, and when so received by him, he shall issue his receipts therefor in the name of the state board of land commissioners, and shall in addition issue a duplicate receipt to said state treasurer. (Ch. 178, S. L. 1909, p. 430.)

Sec. 98. Assessments—Purchaser pays accrued assessments—Exception.—Upon the receipt of such receipts from said county treasurers, it shall be the duty of the register of the state board of land commissioners to enter and charge the same against each tract of land so paid on, in a book to be kept by him for that purpose, showing the amount paid, date of payment and to whom paid, and whenever any of said tracts of land shall be sold, the purchaser thereof, in addition to the purchase price therefor, shall pay all of such accrued assessments so paid as aforesaid, together with interest thereon, from the date of payment at the rate of 6 per centum per annum, such accrued assessments and interest thereon to be included in the total purchase price to be paid by said purchaser; *Provided*, That this section shall not apply to such assessments as shall have been paid by the lessees of any such tracts of land, theretofore leased from the state as hereinafter provided. (Ch. 178, S. L. 1909, p. 430.)

Sec. 99. Tenant pay assessments in addition to rent.—In the event that any such tracts of land so included within any irrigation district, shall be leased from the state board of land com-

missioners, then and in that case all such lessees shall in addition to the rental paid to said state board of land commissioners, pay such an additional amount to said board as will equal the district assessments levied upon such lands for the year in which such rental shall be paid; and such monies when so received by the register of the state board of land commissioners, shall be turned into the state treasurer and be by him kept in a separate fund for the payment of such assessments aforesaid. (Ch. 178, S. L. 1909, p. 430.)

Sec. 100. Requirements of contracts of sale of such lands.—All contracts for the sale of any such lands included within any irrigation district shall, in addition to the purchase price to be paid, provide that such purchaser shall on or before the first day of March in each and every year, until he shall have secured a patent for such lands, pay unto the register of the state board of land commissioners such an amount as will equal the district assessments so levied upon such lands for the year in which such payment is to be made, and such monies when so received by said register, shall be turned into the state treasurer and be by him kept in a separate fund for the payment of such assessments aforesaid. (Ch. 178, S. L. 1909, p. 431.)

Sec. 101. Securing water rights for state lands.—For the purpose of furnishing water and securing water rights for state lands, the state board of land commissioners is hereby authorized to enter into contracts with any person, corporation or irrigation district, providing for such irrigation, and to petition all such lands into irrigation districts at the time of or after the formation of such districts. (Ch. 85, S. L. 1911, p. 211.)

Sec. 102. Freeholders' rights—By whom exercised—Lessees and purchasers to pay irrigation assessments.—In case of any such land so petitioned into any irrigation district, the state board of land commissioners shall be considered in all respects as freeholder, so long as said land remains unsold, but as soon as any of such land is sold, whether occurring prior or after the time such land is petitioned into any such irrigation district, the purchaser shall from the time of his purchase be considered as such freeholder and entitled to all the rights of a freeholder, whether or not he has completed his payments to the state board of land commissioners, providing that in no case shall any interest or title of the state be made liable or subjected to any claim for any water tax, water assessment or water charge, by reason of the including of any of such state land in any irrigation district.

All assessments or other payments for the cost of so irrigating any such state land shall be paid by the lessees or purchasers thereof. In case of any lease or sale, the lessee or purchaser shall pay to the register on or before March first of each year, in addition to his rental or amount due on his contract of purchase, as the case may be, such an additional amount as will equal the district assessment for an equal amount of land within the district, or such greater amount as the board may require, and the register shall pay such additional amounts to the proper officer authorized by law to receive payment of assessments within such district to apply on the cost of furnishing water for such state land. Whenever the title to any such state land shall pass from the state, the unpaid balance of the cost of furnishing water for the same shall at once become due and payable and attach as a lien thereon and be collected as an assessment of such irrigation district, in the same manner as assessments on other lands in the district. (Ch. 85, S. L. 1911, p. 211.)

Sec. 103. Powers of state board of land commissioners.—That in order to provide payment for such water rights for state lands, the state board of land commissioners may agree that whenever any state land for which irrigation is provided, is leased or sold, the lessee or purchaser as the case may be, shall pay the agreed value therefor, at such times and in such amounts and in such proportion as may be agreed upon by the state board of land commissioners, and the state board of land commissioners shall have full power to secure to any such person, corporation or irrigation district so furnishing water for the irrigation of state lands, the payment of the cost of such water rights upon such lands being leased or sold by the lessee or purchaser thereof, provided that in no case shall the state board of land commissioners have any power to use any of the school fund, either principal or interest, for any such purpose. (Ch. 85, S. L. 1911, p. 212.)

IRRIGATION DISTRICTS

Sec. 104. Land outside irrigation districts may be admitted—
Petition.—The holder or holders of title, or evidence of title of any land adjacent to or situated within the boundaries of any irrigation district or irrigable from the ditches, canals and irrigation works of the district, may file with the board of directors of said district a petition in writing, praying that such lands be included in such district. The petition shall describe the tracts, or body of land owned by the petitioners, but such description

need not be more particular than is required when such lands are entered by the county assessor in the assessment book. Such petition shall be deemed to give the assent of the petitioners to the inclusion in said district of the lands described in the petition, and such petition must be acknowledged in the same manner that conveyances of land are required to be acknowledged. (Ch. 154, S. L. 1911, p. 468.)

STATE LAND—IRRIGATION

Sec. 105. **Land commissioners authorized to irrigate and improve land.**—That the state board of land commissioners of the state of Colorado be, and it is, hereby authorized and directed to take, on behalf of and in the name of the state, as speedily as practicable, such action as may, in the judgment of said board, be necessary or desirable to irrigate and improve such lands belonging to the state of Colorado, and lying in the San Luis valley and elsewhere, as may in the judgment of the board be susceptible of improvement by irrigation. (Ch. 150, S. L. 1913, p. 588.)

Sec. 106. **Actions to secure irrigation.**—That such action be taken by initiating such water rights and systems for reservoirs, canals and conduits, or by the purchase of existing water rights, systems for reservoirs, canals and conduits, or an interest therein, including pumping plants, highways and such other accessories as may, in the judgment of the board, be necessary or desirable to the successful accomplishment of the objects of this act. (Ch. 150, S. L. 1913, p. 588.)

Sec. 107. **Laws of state and United States invoked.**—That in furtherance of such objects the board shall proceed in accordance with the irrigation laws of the state, in so far as the same be applicable, and may, if it so elect, also proceed under the laws of the United States relating to the acquisition of such rights or easements upon and over the public lands of the United States. (Ch. 150, S. L. 1913, p. 588.)

Sec. 108. **Board not bound to concur in departmental decisions.**—That in case such procedure, or any part thereof, shall be under the laws of the United States, the board shall not be bound, or required, to accept or concur in the action or decision, or failure or delay in action or decision of any departmental or other officer, agent or employe of the United States, if in the judgment of the board the same is not in good faith, or for the mere purpose of delay or is adverse to be legal, constitutional or inherent rights of the state.

Nor shall the board, in any event, accept or concur in any such action, decision, grant or permit which is, or purports to be, revocable by the United States or by any departmental or other officer, agent or employe of the United States at discretion, or without reasonable cause and opportunity to be heard. (Ch. 150, S. L. 1913, p. 589.)

Sec. 109. Invoke power of eminent domain.—That in case of such procedure under the laws of the United States and in the event that any departmental or other officer, agent or employe of the United States, shall, in the judgment of the board, fail or refuse to act or decide within a reasonable time, or in bad faith, or for mere purpose of delay, or act or decide adversely to the legal, constitutional or inherent rights of the state, upon any question involved and subject to his action or decision, or shall obstruct, hinder or interfere with the necessary occupancy or possession of the lands involved, by the state, or any of its agents or employes, the board shall at once proceed to acquire the desired rights or easements occupancy or possession by invoking the power of eminent domain of the state.

Such proceedings including the right to enter upon the lands involved for the purpose of examination and survey, and the right of possession during the pendency of the action, and in all other respects shall be as provided in chapter XLV of the Revised Statutes of Colorado, 1908, in relation to eminent domain, and amendments thereto, in so far as applicable, and as supplemented and enlarged by this act. (Ch. 150, S. L. 1913, p. 589.)

Sec. 110. Actions in the name of the state.—Such action shall be brought in the name of the state of Colorado as plaintiff, in the district court of any county in which the system of irrigation or any part thereof is located, or is to be located, and shall make as defendants thereto by proper name and official title, when known, such departmental and other officers, agents and employes of the United States as have or claim to have jurisdiction, possession, charge or control, or are exercising the same, over the lands involved or any part thereof; also such other officers, agents and persons as the board may deem necessary or proper.

The summons and other process shall be served and return made in the manner prescribed in the aforesaid laws of the state relating to eminent domain, or in any other manner required by the order of the court or judge in the action. (Ch. 150, S. L. 1913, p. 589.)

Sec. 111. Interests of the United States, subject to jurisdiction in court.—That upon the completion of service and return of summons or other process and the expiration of the time required

by law or the order of the court or judge before whom the action is pending for the appearance of the defendants, they, and all interests of the United States in the lands involved shall be deemed to be in court and subject to its jurisdiction, and thereafter, such proceedings shall be had as are required by the aforesaid laws of the state, so far as applicable and as supplemented and enlarged by the provisions of this act, and if the judgment of the court be in favor of the state it shall vest in the state the rights and easements so adjudged, upon and over all public lands of the United States so involved, whether the same be reserved or unreserved, or withdrawn temporarily or permanently for any purpose whatever, except those held for strictly governmental purposes, the jurisdiction over which has been ceded by the state to the United States. (Ch. 150, S. L. 1913, p. 590.)

Sec. 112. **Mandamus.**—Nothing in this act shall prevent the board or the state from proceeding in aid of the action herein provided for, or independently thereof, by mandamus, injunction or other appropriate action at law or in equity, civil or criminal to acquire irrigation rights and easements upon the public domain for the benefit of the state or its citizens, or to protect and defend the same. (Ch. 150, S. L. 1913, p. 590.)

Sec. 113. **Attorney-general to aid in enforcement—Employ assistant.**—The attorney-general of the state is directed to give prompt and special attention to the enforcement of this act and shall, when so requested by the board, give advice and take such legal action as in his judgment is necessary or proper, and to that end may, if necessary, with the approval of the board and governor, employ not to exceed one lawyer or firm of lawyers to assist him therein, but no retainer shall be paid or other payment for such services made until after the same have been rendered, or concurrently with such rendition. (Ch. 150, S. L. 1913, p. 590.)

Sec. 114. **Appropriation—Vouchers.**—There is hereby appropriated the sum of \$2,500, or so much thereof as may be necessary, for the purpose of carrying out the provisions of this act, payable out of the internal improvement fund or the proceeds of the sale of land under section 5197 of the Revised Statutes of Colorado, 1908, or both; the same to be expended under the direction of the board, with the approval of the governor, but only in payment for services and expenses actually rendered or incurred, or the purchase of existing irrigation systems or interests therein, or damages awarded under eminent domain proceedings, or such other expenses as may be reasonably necessary to the effectual enforcement of this act.

Vouchers therefor to be approved by the president of the board and the governor. (Ch. 150, S. L. 1913, p. 591.)

STATE BOARD OF LAND COMMISSIONERS

Sec. 115. **How appointed—Term—Salary.**—The state board of land commissioners shall be composed of three (3) persons to be appointed by the governor, with the consent of the senate, who shall have the direction, control and disposition of the public lands of the state under such regulations as are and may be prescribed by law, one of which persons shall at the time of his appointment be designated as president of the board and whose office shall expire on the second Tuesday of January, 1917, one of which persons shall at the time of his appointment be designated as register of the board and whose term of office shall expire on the second Tuesday of January, 1915, and the third member of said board shall at the time of his appointment be designated as the engineer of the board and shall always be professionally a civil engineer, who, for at least five (5) years, has been actively engaged in the practice of his profession and whose term of office shall expire on the second Tuesday of January, 1913; and the successor and successors of the first members of the board shall each be appointed for the terms of six (6) years.

On the adoption of this amendment by the electors of this state, it shall not go into full force and effect until the second Tuesday of January, 1911.

The members of the board shall each receive a salary of three thousand dollars (\$3,000) per annum until otherwise provided by law; but the salary of each member of this board is to be paid out of the income of the said state board of land commissioners. (Sec. 9, Art. IX, Constitution, as amended by ch. 149, S. L. 1909, p. 322.)

See citations under Sec. 9, Art. IX, of the Constitution.

Sec. 116. **Examination of accounts—Report.**—The governor shall, upon the first day of April and October of each year, appoint a committee of three competent persons to examine the books and accounts of the state board of land commissioners. Said committee shall make a report in writing, which shall be delivered to the governor. (L. 1905, p. 320, sec. 3; superseding L. 1889, p. 38, sec. 1; sec. 5163, R. S. 1908, p. 1215.)

[Is this section superseded by section 5003, R. S. 1908?]

Sec. 117. **Records and documents.**—The state board of land commissioners shall cause a complete record of their proceedings

to be kept in a suitable book, and shall preserve all important papers and documents pertaining to the state lands. (L. 1905, p. 320, sec. 4; sec. 5164, R. S. 1908, p. 1216.)

Sec. 118. Register — Salary — Duties — Powers — Report — Bond.—The state board of land commissioners are hereby authorized to appoint a register of the state board of land commissioners, who is not a member of said board, whose salary shall be three thousand dollars per annum. The state board of land commissioners is authorized and empowered to employ all office force. It shall be the duty of the register to keep the records of the state board of land commissioners; to make out and countersign all patents and leases issued by the president of the said board to purchasers and lessees of state lands, and keep a suitable record of the same; to file and preserve bonds of lessees and those given by purchasers to secure deferred payments; to make and deliver to purchasers suitable certificate of purchase, to have the custody of the seal of the state board of land commissioners; to keep the minutes of the said board; to receive all moneys from the deputy register collected by such officer on account of the state board of land commissioners, and to pay them over to the state treasurer at the end of each calendar month, and in the absence of the deputy register to receipt for and receive all moneys payable to the state board of land commissioners, and to perform such other duties concerning the land affairs of the state as the said board may direct. It shall also be the duty of the register in any and all contested cases, at the direction of the board, when hearings are necessary and witnesses may be required to be examined, to set a date for hearing such cases. The register shall duly advise the contestants and their accredited attorneys of the date set for such hearings, and on the date appointed the register is hereby empowered to administer oaths and to hear and receive evidence, after the manner and procedure established by the United States in the district land offices, or in accordance with the rules that are or may be adopted by the board governing such cases. All evidence given and provided in such cases before the register shall be fully transcribed and arranged at the cost of the parties to the contest, and shall form a part of the records of the office of the state board of land commissioners. The register shall, as soon as convenient after such hearings, present a full transcript of the proceedings to the state board of land commissioners, who shall render a decision in accordance therewith. The register shall be provided with a suitable office, office furniture, stationery and postage by the secretary of state. On or before the tenth day of December immediately preceding the meeting of the general assembly, he shall make a report of the business of his office.

the transactions of the state board of land commissioners, and the land affairs of the state, showing, by tables, the land belonging to the several funds of the state, to whom sold, the amount leased, the receipts from all sources, and said reports shall contain any such other items or information concerning state lands as the state board of land commissioners may deem worthy of publication; *Provided*, Said report does not exceed the number of pages permitted by law. Of this report there shall be published the same number as is now, or may be hereafter, required by law for the executive departments of the state. Before assuming the duties of his office the said register shall give bond in the sum of fifty thousand (50,000) dollars, conditional upon the faithful discharge of his duties, and said bond shall be approved by the state board of land commissioners and filed with the secretary of state. (L. 1905, p. 320, sec. 5; sec. 5165, R. S. 1908, p. 1216.)

[Number and size of reports. Section 4710, R. S. 1908.]

Sec. 119. Deputy register—Duties—Bond.—The state board of land commissioners shall be allowed the sum of one thousand eight hundred (1,800) dollars annually for the employment of a deputy register. It shall be the duty of the deputy register to receipt and account for all moneys payable to the state board of land commissioners, and said deputy register shall pay same over to the register at the end of each calendar month. The deputy register shall give a good and sufficient bond, to be approved by the state board of land commissioners, for the faithful performance of the duties pertaining to that position, the amount of said bond to be fixed by the state board of land commissioners. The deputy register shall perform such other duties as may be prescribed by the state board of land commissioners. (L. 1905, p. 321, sec. 6; sec. 5166, R. S. 1908, p. 1216.)

Sec. 120. Land patents—Signed—Attested—Certified copies.—The governor of the state shall be, and is hereby authorized, and in case of his absence or inability, the lieutenant governor shall be, and is hereby authorized to execute a good and sufficient deed or patent of conveyance, transferring in fee, without covenants, any and all lands which shall, or may be ordered sold, or which shall be sold and disposed of by the state land board under the statutes of this state. Such deed or patent shall be attested by the secretary of state, countersigned by the register, and have the great seal of the state and the seal of the state board of land commissioners thereto attached, but need not be acknowledged. The certified copy of the record of any such deed or patent shall be receivable in evidence in all courts of record in this state, the same

as the original. (L. 1905, p. 322, sec. 7; sec. 5167, R. S. 1908, p. 1217.)

Where a party is entitled to a patent, mandamus will lie to compel execution and delivery. *Greenwood C. L. Co. vs. Routt*, 17 Colo., 163; 28 Pac., 1127.

Sec. 121. Fees for appraisalment.—The state board of land commissioners shall provide, by rule, for the amount to be paid for the appraisalment of land included in each application to purchase, which amount shall be paid by the person or persons applying for the land when such application is filed with the register. (L. 1905, p. 322, sec. 8; sec. 5168, R. S. 1908, p. 1217.)

Sec. 122. Location and selection of lands.—It shall be the duty of the state board of land commissioners to select and locate all lands which are now, or may be hereafter, granted to this state by the general government, for any purpose whatever, and the board shall take the necessary steps to secure the approval of such selections by the proper officers of the general government. In making such selections, the board may employ such agents and means as may be necessary to acquaint the board with the character of the lands selected; and the board may provide to have the lands belonging to the state classified and appraised. (L. 1905, p. 322, sec. 9; sec. 5169, R. S. 1908, p. 1217.)

Sec. 123. Appraisers—Salaries and expenses.—There shall be appointed by the state board of land commissioners not less than three appraisers of state lands, who shall be under the direction of the register of the state board of land commissioners, and who shall be paid not more than fifteen hundred (1,500) dollars per annum for such services. There shall also be appropriated the sum of three thousand (3,000) dollars per annum for the purpose of defraying the expenses of said appraisers when visiting the different portions of the state in the discharge of their duties. (L. 1905, p. 323, sec. 10; sec. 5170, R. S. 1908, p. 1217.)

Sec. 124. Fees chargeable—Disposition of fees collected.—The state board of land commissioners is hereby authorized and empowered to collect the fees herein fixed for the issuance of leases, patents, certificates of purchase, right of way deeds, recording assignments, making township plats, filing bonds, and for the filing of all documents necessary to be filed in said office, to-wit:

| | |
|--|--------|
| Filing application to lease..... | \$.50 |
| Filing application to purchase..... | .50 |
| Accepting and approving bond..... | 1.00 |
| Issuing lease, each 160 acres or fraction thereof... | 1.00 |
| For each additional 160 acres or fraction thereof in the same lease | .50 |

| | |
|---|------|
| For issuing patent or certificates of purchase, each 160 acres or fraction thereof..... | 2.00 |
| Assignment fee | 1.00 |
| Patent for town lot, one or more..... | 2.00 |
| Right of way deeds, easements, etc..... | 3.00 |
| For issuing permission to make improvements in excess of amount allowed by the terms of the lease | 2.00 |

Certified copies of any instrument or of the records shall be furnished at the rate of 20 cents per folio and \$1.00 for the certification.

Each application for lease must be accompanied by the advertising fee of five dollars, and the filing fee of fifty cents.

All applications for purchase must be accompanied by an appraisement fee of ten dollars and the filing fee of fifty cents.

If the board orders a sale to be made, the applicant shall be required to pay an advertising fee of seventeen dollars.

All township plats shall be furnished at fifty cents each.

For subdividing mineral lands into lots of ten acres each for the purpose of leasing upon the application of any person, a deposit of ten dollars for each lot shall be required.

All moneys collected by the state register and deputy in pursuance of any action or resolution of the board, shall be paid into the state treasury.

All aforesaid fees shall be paid in advance to the deputy register and be transmitted and accounted for by said deputy to the register of the board, as in the case of other funds, and the said register shall turn the same into the state treasury, as in the case of moneys collected for rent and partial payments on certificates of purchase. And it shall be the duty of the state treasurer to receive said funds and credit the same to the land commissioners' cash fund, to be paid out by him on warrants drawn by the auditor of state. It shall be the duty of said auditor to draw warrants against said fund in payment of such vouchers as may be audited and allowed by the state board of land commissioners and certified to by the governor of the state and the register of the state board of land commissioners. (L. 1905, p. 323, sec. 11; sec. 5172, R. S. 1908, p. 1217.)

[For fees under desert land act see section 92.]

[Fees for appraisement paid in advance. Section 121.]

This section cited *In Re Salaries of Commissioners and Employes of State Land Board.* 55 Colo.,; 133 Pac., 140.

Sec. 125. Settlers' improvements.—That when any person hath heretofore, or shall hereafter settle upon and improve any of the public lands which have been, or shall hereafter be, donated

by act of congress to public uses, for educational or other purposes, and upon any sale of such lands by public authority, subsequent to such settlement and improvement, if the person settling upon such lands shall not become the purchaser, the person becoming the purchaser of such lands shall pay to such settler the reasonable value of his improvements thereon. Whenever the parties can not agree as to the reasonable value of such improvements, the same shall be recoverable by an action of assumpsit in the district court of the proper county. (L. 1905, p. 324, sec. 12; sec. 5173, R. S. 1908, p. 1218.)

Sec. 126. **Purchaser's right to possession.**—Nothing herein contained shall be construed to interfere with the right of the purchaser of any such lands to the immediate possession thereof, upon the completion of his purchase. (L. 1905, p. 324, sec. 13; sec. 5174, R. S. 1908, p. 1218.)

Sec. 127. **Lease of state lands by land board—Rental—Lease of mineral lands—Royalty—Term—Development by lessee.**—The state board of land commissioners may lease any portion of the land of the state, at a rental to be determined upon after an examination of the land by an appraiser, except as hereinafter provided. The lessee shall pay the annual rental of [to] the state land board, who shall receipt for the same in the lease. Upon receiving such annual rental, the state board shall immediately transmit the same to the state treasurer and take his receipt therefor. If stone, coal, oil, gas or other mineral not herein mentioned, be found upon the state land, such land may be leased for the purpose of obtaining therefrom the stone, coal, oil, gas or other mineral, for such length of time, and conditioned upon the payment to the state board of such royalty upon the product as the state board of land commissioners may determine; *Provided, further*, that the lessee, within a reasonable time, as determined by the state board of land commissioners, shall develop such land and engage in actual mining and operation of said lease. Failure to do so shall constitute valid cause for cancellation of said lease. (Ch. 208, S. L. 1909, p. 504.)

The statutory limitation that leases shall not be for more than a certain period does not apply to stone, gas or mineral lands. *In Re State Lands*, 18 Colo., 367; 32 Pac., 989. *Colo. F. & I. Co. vs. State Land Board*, 14 Colo. App., 92, 96; 60 Pac., 370.

The court declined to answer the governor's question whether the Board has the power to extend or enlarge a mineral lease beyond its original terms. *In Re Leasing State Lands*, 27 Colo., 101; 60 Pac., 345.

Mandamus lies against the Board to compel the execution of a contract of lease agreed upon. The matter of terms and conditions and time of a coal lease is wholly within the discretion of the Board. *Colo. F. & I. Co. vs. State Land Board*, 14 Colo. App., 91; 60 Pac., 370.

Cited in holding that the Board may cancel a lease procured by misrepresentation. *American Sulphur Co. vs. Brennan*, 20 Colo. App., 442; 79 Pac., 751.

Sec. 128. Rent payable in advance.—All leases of state or school land shall be conditional upon the payment of rent in advance and the violation of this condition shall work a forfeiture of the lease, at the option of the state board of land commissioners, after thirty days' notice to the lessees, such notice being sent to the last known postoffice address of lessee, as given by himself to the register of the state land board. (L. 1905, p. 325, sec. 15; sec. 5176, R. S. 1908, p. 1219.)

Sec. 129. Term of lease—Renewal—Sale under lease.—No lease of state or school land for grazing purposes shall be for a longer term than twenty years, and no lease of state or school land for agricultural purposes shall be for a longer period than ten years, except as hereinafter provided.

When any lease expires by limitation, the holder thereof may renew the same in manner as follows: At any time within the thirty days next preceding the expiration of the lease, the lessee, or his assigns, shall notify the register of his desire to renew said lease; if the lessee and state board agree as to the valuation of the land, a new lease may be issued, bearing even date with the expiration of the old one, and upon like conditions; *Provided, always*, That the former valuation shall not be decreased without the consent of the state board; *Provided*, That nothing in this section shall prohibit the state board from leasing any of the state lands to such party or parties as shall secure to the state the greatest annual revenue; *Provided, further*, That the state board may, in its discretion, offer said land for sale at the end of any period of five (5) years, during the term of said lease, upon the same terms and in the same manner as though said lease had not been executed. (L. 1905, p. 326, sec. 16; sec. 5177, R. S. 1908, p. 1219.)

The power to regulate the disposition of public lands is expressly reserved to the legislature. It cannot under guise of regulation take from the Board all power of disposition. *In re State Lands*, 18 Colo., 360, 367; 32 Pac., 987.

The limitation as to time of lease is valid, but does not apply to coal, stone, etc., under sec. 5175—*Id.* 367. *Colo. F. & I. Co. vs. State Land Board*. 14 Colo. App., 92; 60 Pac., 370.

Cited in declining to answer a question by the governor as to the right of the Board to extend or enlarge mining leases. *In re Leasing State Lands*, 27 Colo., 102; 60 Pac., 345.

Sec. 130. When improvements on lands to be leased—Board may correct mistakes and refund—May cancel leases, when.—Should any one apply to lease any of the lands belonging to the state upon which there are improvements belonging to another party, before a lease shall issue, he shall file in the office of the state board of land commissioners a receipt, showing that the price of said improvements, as agreed upon by the parties, or

fixed by the state board, has been paid to the owner thereof in full, or shall make satisfactory proof that he has tendered to such owner the price of said improvements so agreed upon or fixed by the board. If, by any mistake or error, any money has been, or shall hereafter be, paid on account of any sale or lease of state lands, it shall be the duty of the board to draw a voucher in favor of the party paying said money; and on presentation of such voucher the auditor shall draw his warrant upon the state treasurer for the amount, and the state treasurer shall pay the same out of the fund into which such money was deposited or placed. If, through any fraud, deceit or misrepresentation, any party or parties shall procure the issuing of any lease for state lands, the board shall have the authority to cancel any such lease. (L. 1905, p. 326, sec. 17; sec. 5178, R. S. 1908, p. 1219.)

[Application to cut timber on state land. Sections 23-34.]

The authority given the Board to cancel leases is not unconstitutional because vesting judicial power, but the action of the Board is not final. *Am. Sulphur Co. vs. Brennan*, 20 Colo. App., 442; 79 Pac., 751.

Sec. 131. Leasing and sale of lands in cities.—Lands within city boundaries may be leased for a term not exceeding fifty years. All such leased lands shall be reappraised and classified at least every five years, and the lessee of all such lands shall pay any increased rental or forfeit the land so held. When any lease expires by limitation the holder thereof may renew the same in manner as follows: At any time within the thirty days next preceding the expiration of the lease, the lessee, or his assigns, shall notify the register of his desire to renew said lease. If the lessee and the state board of land commissioners agree as to the valuation of the land, a new lease may be issued, bearing even date with the expiration of the old one, and upon like conditions; *Provided, always*, That the former valuation shall not be decreased without the consent of the state board of land commissioners; *Provided*, That nothing in this section shall prohibit the state board of land commissioners from leasing any of the state lands to such party or parties as shall secure to the state the greatest annual revenue; *Provided, further*, That the state board of land commissioners may, in its discretion, offer said land for sale at the end of any period of five years, upon the application of the lessee, during the term of said lease, upon the same terms and in the same manner as though said lease had not been executed. (L. 1905, p. 326, sec. 18; sec. 5177, R. S. 1908, p. 1219.)

Sec. 132. Trespassing easements — Penalties against trespassers.—All corporations, companies or persons using or occupying any state or school lands without lease, and all corporations, companies or persons who shall use or occupy state or school lands for more than thirty days after the cancellation or expira-

tion of a lease, and any corporation, company or person who shall construct a reservoir, ditch, railroad, public highway, telegraph or telephone line, or in any manner occupy or enter upon lands belonging to the state of Colorado, without first having secured the authority and permission of the state board of land commissioners to so occupy said land for such purpose, shall be regarded as trespassers, and, upon conviction thereof, shall be fined in the sum of not less than twenty-five (25) dollars and not more than one hundred (100) dollars, and each day shall be considered a separate offense, and in each case, where a bond has been furnished to the state board of land commissioners, the bondsmen of the lessee shall be equally liable with himself, and in addition to the foregoing penalty the state shall be allowed to collect as rental for the use of such lands a sum equal to the appraised value thereof for rental purposes, as fixed by an appraiser from the state board of land commissioners, and which value shall not be less than five cents per acre per annum. All suits under the provisions of this act shall be instituted under the direction of the attorney general in the name of the people of the state of Colorado. (L. 1905, p. 327, sec. 19; sec. 5180, R. S. 1908, p. 1220.)

Sec. 133. Sale of school lands—Auction—Minimum price.—All lands granted by congress to the state for the support of common schools, being sections sixteen and thirty-six, and all that may be selected in lieu of said sections, are hereby withdrawn from market, and the sale thereof prohibited; *Provided*, Parcels of not less than forty (40) acres of such land may be sold when the state board is of the opinion that the best interests of the school fund will be served by offering such parcel for sale; *Provided, further*, That such land shall only be sold at public auction, and at not less than three and one-half dollars per acre; *Provided*, That school lands shall not be offered for sale, except upon the conditions hereinafter provided for the sale of other state lands. (L. 1905, p. 327, sec. 20; sec. 5181, R. S. 1908, p. 1220.)

The discretion to be exercised by the Board in the sale of land is to be exercised in its collective capacity. *Greenwood C. L. Co. vs. Routt*, 17 Colo., 164; 28 Pac., 1127.

The fact that the Board offered land for sale is evidence of the existence of the condition authorizing the exercise of its powers. *Routt vs. Greenwood C. L. Co.*, 18 Colo., 137; 31 Pac., 860.

Under sections 12-14, Act 1887, p. 332, the Board had power to sell an irregular tract of about five acres, without subdividing it into lots and blocks. *Peo. vs. G. H. Land Co.*, 51 Colo., 260; 117 Pac., 142.

Sec. 134. Platting school lands into lots—Sale.—The state board of land commissioners may cause any portion of the state or school lands to be laid out in lots and blocks, to be sold from time to time, at public auction, to actual settlers only, or to

persons who shall improve the same, in such quantities and at such times as shall enable the state to realize the best prices for such land, and such land shall not be sold except in lots or blocks, as herein provided. (L. 1905, p. 328, sec. 21; sec. 5182, R. S. 1908, p. 1220.)

Sec. 135. Sale of land to United States for irrigation projects.—Any state lands needed by the United States for irrigation works, other than right of way for roads, bridges, canals, ditches, tunnels, pipe lines, telephone and transmission lines, shall be sold to the United States at a price not to exceed three dollars and fifty cents (\$3.50) per acre, and the state board of land commissioners shall direct the governor, secretary of state and register to execute and sign, as provided in this act, on behalf of the state, a proper deed or other instrument of writing for such lands. (L. 1905, p. 328, sec. 22; sec. 5183, R. S. 1908, p. 1220.)

Sec. 136. Sale of state lands in discretion of board of land commissioners—Exceptions—Settlers—Improvements—Advertising of sales.—The state board of land commissioners may at any time direct the sale of any state lands, except as provided in this act, in such parcels, to actual settlers only, or to persons who shall improve the same, as they shall deem for the best interests of the state and the promotion of the settlement thereof; *Provided*, That no lands belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States or its duly authorized agents, shall hereafter be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. All sales under this act, except those to the United States, shall be advertised in four consecutive issues of some weekly paper of the county in which such land is situated, if there be such paper; if not, then in some paper published in an adjoining county, and in such other papers as the board may direct. The advertisement shall state the time, place and terms of sale, and the minimum price per acre fixed by the board of each parcel, below which no bid shall be received; *Provided*, That in all cases the land shall be offered in legal subdivisions of not less than forty (40) acres, (unless the tract offered for sale shall contain less than forty (40)

acres, in a contiguous body, in which event the land shall be sold according to a survey made thereof, and be described by metes and bounds), or more than one hundred and sixty (160) acres; *Provided*, That sales of state lands shall be made to citizens of the United States, and to those who have declared their intention to become such only. If any land be sold on which surface improvements shall have been made by a lessee, said improvements shall be appraised under the direction of the state board. When lands on which such improvements have been made are sold, the purchasers, if other than the owner of said improvements, shall pay the appraised value of said improvements to the owner thereof, taking a receipt therefor, and he shall deposit such receipt with the state board before he shall be entitled to a patent or certificate of purchase. All such receipts shall be filed and preserved in the office of the state board of land commissioners. (Ch. 209, S. L. 1909, p. 505.)

The Board may direct the Register to perform all the details incident to a sale without delegating its trust functions. *Routt vs. Greenwood C. L. Co.*, 18 Colo., 137, 139; 31 Pac., 860.

A complaint by the State to cancel a patent because of false representation as to improvements held not to state a cause of action. Appraisal of improvements is not a condition precedent to right to sell. *Peo. vs. Tynon*, 2 Colo. App., 131; 29 Pac., 810.

This section cited in an action upon a purchaser's bond given under the act of 1877. *Peo. vs. Clough*, 16 Colo. App., 125; 63 Pac., 1069.

Under act of 1887, p. 333, the Board had discretion in fixing the place of sale, sufficient showing of order for sale elsewhere than at capitol. *Peo. vs. G. H. Land Co.*, 51 Colo., 260; 117 Pac., 141.

Sec. 137. Place of sales—Terms of payment—Certificate of purchase—Patent.—All sales of state lands shall be held at the state capitol, unless otherwise directed by the state board of land commissioners. Terms of payment shall be as follows, viz.: Timber sales, cash on the day of sale; on lands selling for three dollars and fifty cents to twenty-five dollars per acre, 10 per cent. of the purchase money on the day of the sale, the balance in eighteen equal annual payments, at 6 per cent. per annum. Lands selling at more than twenty-five dollars, and less than seventy-five dollars per acre, 20 per cent. cash on day of sale, the balance in fourteen equal annual payments, at 7 per cent. per annum, or the purchaser may make full payment with accrued interest at any time. Lands selling at seventy-five dollars and upwards, 30 per cent. cash, and balance in seven equal annual payments, at 7 per cent. interest, or the purchaser may make full payments with accrued interest at any time. When the conditions hereinbefore prescribed have been complied with, the state board shall make and deliver to the purchaser a certificate of purchase, containing the name of the purchaser, a description of the land purchased, the sum paid, the amount remaining due,

and the date at which each of the deferred payments falls due, and the amount thereof; such certificate shall be signed by the governor and countersigned by the register, and a record of the same kept by him in a suitable book. Whenever a purchaser of any state land has complied with all the conditions of the sale, and paid all purchase money with the lawful interest thereon, he shall receive a patent for the land purchased; such patent shall be signed by the governor, attested by the secretary of state, and countersigned by the register, and have the great seal of the state and the seal of the state board of land commissioners thereto attached; and when so signed, such patent shall convey a good and sufficient title in fee simple; *Provided*, That no patent shall be issued for less than forty acres, except for town lots; *Provided*, That the governor and register shall be authorized to issue certificates of purchase in lieu of receipts temporarily issued subsequent to April 17, 1899, for money paid on account of lands heretofore sold by the state board of land commissioners under existing law, and patents in lieu of final receipts so issued during the same period on account of payment in full for lands sold, on presentation of such receipt by the legal owners thereof. (L. 1905, p. 329, sec. 24; sec. 5185, R. S. 1908, p. 1221.)

Mandamus is the proper remedy in case of a refusal to execute and deliver a patent. *Greenwood C. L. Co. vs. Routt*, 17 Colo., 164; 28 Pac., 1127.

This section cited in an action upon a purchaser's bond given under the act of 1877. *Peo. vs. Clough*, 16 Colo. App., 125; 63 Pac., 1069.

Sec. 138. Defaulting purchasers—Forfeiture.—Whenever any purchaser of land shall default for a period of thirty days in any of the payments of either principal or interest due upon the certificate of purchase issued to him, said certificate may be forfeited and the lands reverted to the state of Colorado upon a notice to that effect mailed to the last known postoffice address of said purchaser, and which notice shall allow him thirty days additional in which to pay the indebtedness to the state. (L. 1905, p. 330, sec. 25; sec. 5186, R. S. 1908, p. 1221.)

This section cited in an action upon a purchaser's bond given under the act of 1877. *Peo. vs. Clough*, 16 Colo. App., 125; 63 Pac., 1069.

Sec. 139. Re-sale of forfeited land.—If any purchaser of state land, after receiving a certificate of purchase, as provided in section 24 of this act, fails to make any one of the payments stipulated therein, and the same remains unpaid for thirty days after the time when it should have been paid, as specified in such certificate, the state board of land commissioners may sell the lands again; *Provided*, That, in case of a sale, all previous payments made on account of such land shall be forfeited to the state; the land shall revert to the state, and the title thereof shall

be in the state, as if no sale had ever been made. (L. 1905, p. 330, sec. 26; sec. 5187, R. S. 1908, p. 1221.)

[Section 24 above referred to is section 137.]

Cited in holding that land sold under the act of 1889 was not taxable while title was vested in that state. *Colo. Farm etc. Co. vs. Beerbohm*, 43 Colo., 467; 96 Pac., 445.

Sec. 140. Payments, where made—Venue of action to recover.—All moneys due and payable to the state board of land commissioners shall be paid at the office of the state board of land commissioners in the state capitol in the city and county of Denver, Colorado, and all actions for the recovery of same, or for the cancellation of certificates of purchase, or for the cancellation of leases, or for the recovery of the possession of the land, actions of forcible entry and detainer, or ejectment, shall be brought in any court of competent jurisdiction in the city and county of Denver, in the state of Colorado. (L. 1905, p. 330, sec. 27; sec. 5188, R. S. 1908, p. 1222.)

Sec. 141. Bond of purchaser or lessee.—When, in the judgment of the state board, a bond by the purchaser of state lands is necessary, the state board shall require such purchaser to give a bond, upon such conditions as the board may determine. In leasing state lands, the state board shall require of the lessee such a bond as shall secure the state against loss or waste, or occupation of the land for more than thirty days after the cancellation or expiration of the lease of said lessee, unless the said lessee becomes the purchaser of the land, and in no case shall the lessee be allowed to cut or use more timber than shall be necessary for the improvement of the land or for fuel for the use of the family of the lessee, and the cutting and hauling of timber to sawmills, to be sawed on the shares, is expressly prohibited. (L. 1905, p. 331, sec. 28; sec. 5189, R. S. 1908, p. 1222.)

A condition in a bond to comply with the terms of the certificate of purchase makes the certificate a part of the bond. *Peo. vs. Clough*, 16 Colo. App., 125; 63 Pac., 1069.

Sec. 142. Lost certificate of purchase—When new one issued.—Whenever a certificate of purchase shall be lost or wrongfully withheld by any person from the owner thereof, the state board of land commissioners may receive evidence of such loss or wrongful detention, and upon satisfactory proof of the fact, may cause a certificate of purchase or patent, as the case may be, to issue to such person as shall appear to them to be the proprietor of the land described in the original certificate of purchase. (L. 1905, p. 331, sec. 29; sec. 5190, R. S. 1908, p. 1222.)

Sec. 143. Board may determine adverse claims.—The state board of land commissioners may hear and determine the claims of all persons who may claim to be entitled in whole or in part,

to any lands owned by this state, and the decisions of said board shall be held to be final, until set aside by a court of competent jurisdiction; and the board shall also have power to establish such rules and regulations, as in their opinion may be proper, to prevent fraudulent applications. (L. 1905, p. 331, sec. 30; sec. 5191, R. S. 1908, p. 1222.)

Sec. 144. Lands sold, subject to taxation—Assessor notified.—All lands sold under the provisions of this act, or any interest therein, shall be subject to taxation, and the register of the state board of land commissioners shall furnish to the county assessor of each county on the first day of May of each year a list of the equities owned or acquired in all lands so sold, to whom sold, the price per acre and the amount paid. (L. 1905, p. 331, sec. 31; sec. 5192, R. S. 1908, p. 1222.)

The act of 1877 and amendment of 1889, p. 313, exempting lands from taxation while title was vested in the State was constitutional. Injunction lies to prevent sale of such land for taxes. *Colo. Farm etc. Co. vs. Beerbohm*, 43 Colo., 471; 96 Pac., 445. *Gale vs. Beerbohm*, 43 Colo., 521; 96 Pac., 449.

Sec. 145. Taxes—Revenue—Assessor and Assessment—Definition of terms.—Whenever the terms mentioned in this section are employed in this act, they are employed in the sense herein-after affixed to them.

The term "real estate" includes, first, all land or interests in lands within the state to which title or the right to title has been acquired from or ratified by the government of the United States, or from the state; *Provided*, That all equities in state and school lands purchased under contract taken from the state shall, during the life of the contract, be taxed at their full cash value and that all improvements thereon be taxed at their full cash value. Second, all mines, minerals and quarries in and under the land, and all rights and privileges appertaining thereto; third, improvements.

The term "improvements" includes all buildings, water rights, structures, fixtures, and fences erected upon or affixed to land, whether title has been acquired to said land or not.

The term "personal property" includes everything which is the subject of ownership, whether tangible or intangible, and not included within the term "real estate."

The term "credit" includes every claim and demand for money, labor or other valuable thing, and every annuity or sum of money receivable at stated periods; but pensions from the United States, and salaries and payments expected for services to be rendered, are not included in the above term.

The term "intangible property" shall include rights, credits, franchises, special privileges and special advantages attendant upon or derivable under contract rights having a value for the purposes of income or sale of itself, or in connection with other property. (Ch. 134, S. L. 1913, p. 529.)

Sec. 146. No tax on reverted land.—In case any lands sold under the provisions of this act are reverted to the state of Colorado for any cause whatsoever the register of the state board of land commissioners shall at once notify the county treasurer of the county in which the land is situated, and upon receipt of such notice it shall be the duty of the county treasurer to at once rebate all taxes that have been charged against the lands so reverted. (L. 1905, p. 332, sec. 32; sec. 5193, R. S. 1908, p. 1222.)

Sec. 147. Funds arising from sale of school lands.—The funds arising from the sale of public school, university and agricultural college lands, shall be held intact for the benefit of the funds for which such lands were granted, and shall be known as permanent funds, and the interest and rentals only shall be expended for the purposes of the grant. The funds arising from the sale, leasing and income of all other state lands shall be disposed of as shall be provided by law, but, in the absence of any other provision, may be invested in the same manner as the school fund. (L. 1905, p. 332, sec. 33; sec. 5194, R. S. 1908, p. 1222.)

[See also sections 6957-6958, R. S. 1908.]

Cited *In re Salaries of Commissioners and Employes of State Land Board.* 55 Colo., . . . ; 133 Pac., 140.

Sec. 148. Funds arising from leasing school lands.—All moneys arising from the leasing of agricultural college, university or public school lands which are now, or may hereafter be, received by the state treasurer, shall be treated in all respects in the same manner as is provided by law for the disposition of the interest on the proceeds arising from the sale of the same class of lands. (L. 1905, p. 332, sec. 34; sec. 5195, R. S. 1908, p. 1222.)

Cited *In re Salaries of Commissioners and Employes of State Land Board.* 55 Colo., . . . ; 133 Pac., 140.

Sec. 149. Rights of way across state lands, reservoirs, ditches, etc.—Reversion of lands to state on cessation of use.—The state board of land commissioners may grant the right of way across or upon any portion of state land, upon such terms as the board shall determine for any ditch, reservoir, railroad, public highway, telegraph or telephone line, and may grant land for the purpose of building district school houses, (the establishment or enlargement of state institutions for the use of any charitable or eleemosynary institution), and may direct the governor, secretary of state and register to execute and sign as provided by this act

on behalf of the state, a proper deed or other instrument of writing, for such right of way or grant; *Provided*, That this section shall not be construed to grant authority to convey any such land, except for the purposes above set forth; and, *Provided, further*, That whenever lands granted for any of the purposes mentioned in this section shall cease to be used for such purposes, said lands shall revert to the state of Colorado, upon notice to that effect being served at their last known post office address upon the person to whom such grant was made. The right of way is hereby given, dedicated and set apart, to the United States, to locate, construct and maintain such roads, bridges, canals, ditches, tunnels, pipe lines, telephone and transmission lines as may be constructed for the purpose of irrigation, by authority of the United States, over and through any of the lands which are now, or may be, the property of the state. All conveyances of state lands hereafter made shall contain a reservation of such rights of way. (Ch. 207, S. L. 1909, p. 502.)

[This section supersedes L. '89, p. 331, section 1, which amended L. '87, p. 336, section 32.]

[Right of way for ditches. Section 3465, R. S. 1908.]

[Right of way for pipe line and telegraph line. Section 2452, R. S. 1908.]

Sec. 150. Sales of arid land to secure irrigation on other land.

For the purpose of furnishing irrigation for state lands, the state board of land commissioners is hereby authorized, when, in their judgment, the interests of the state may be subserved thereby, to sell at public sale, at such place as the board may fix, at not less than the appraised value thereof, which in no case shall be less than the minimum price of three dollars and fifty cents (\$3.50) per acre, any tract of arid land belonging to the state; *Provided*, That not more than one-half section of land shall be sold, and in alternate half-sections, to any responsible person or persons, on condition that said person or persons construct an irrigating ditch in such locality, and of sufficient capacity to furnish water for the entire tract, and so located that said tract may be irrigated therefrom; *Provided*, That before any of the state lands shall be offered for sale, the party desiring to purchase said lands and construct a ditch shall enter into a contract with the board guaranteeing to bid at least the minimum price per acre, and to complete such ditch within given time, which time shall be fixed by the board in the contract. The contract shall further provide that the party constructing such ditch shall furnish water for the remaining one-half of the state lands at such reasonable rates as the board and the parties building such ditch or canal may agree upon. Such contract shall be drawn by the attorney general, and signed by the governor and register of the board, and by the party desiring to construct such ditch; *And, provided, further*,

That if any person, other than the person making application for the purchase of said lands shall be the highest bidder at the public sale thereof, such bidder shall, within such reasonable time as the board may fix, enter into a contract and bond, as required by the provisions of this act, for the construction of said ditch, and for the furnishing of water therefrom; and in the event of his failure to furnish a satisfactory bond and enter into the said contract within the time fixed, then such bid shall be disregarded and such public sale shall be void and of no effect. The board shall make the sale upon like conditions as other state lands are sold, and shall require a good and sufficient bond from the party desiring to construct such ditch, conditioned for the faithful performance of the contract and the conditions of the sale. And in no case shall the title of any of said lands pass from the state until the ditch shall have been completed and accepted by the board. (L. 1905, p. 333, sec. 36; sec. 5197, R. S. 1908, p. 1223.)

Sec. 151. Investment of funds arising from sales—Irrigation bonds—Loans.—All purchase moneys arising from the sale of lands shall be paid by the register of the state board of land commissioners to the state treasurer, who shall receipt for same, and the sum shall be by him credited to the permanent fund to which the land belonged. All interest on purchase money and all rents received from lands leased shall be paid by the register of the state board to the state treasurer, and by him credited to the income fund to which the land belonged. All such funds, whether permanent or income, unless otherwise disposed of by law, shall be invested: In the bonds of the state of Colorado; in interest-bearing warrants of the state of Colorado; *Provided*, That such bonds or warrants shall be purchased only at a price not to exceed the par value of same, and the interest only shall be used for the purpose for which the grant was made; as directed by the state board of land commissioners, such funds shall be invested in the legally issued bonds of such irrigation districts as may be lawfully organized within the state of Colorado; *Provided*, That such bonds shall be made by law a first lien against the real estate comprising such district; *Provided, further*, That the proceedings relating to the issue of such bonds shall have been examined, approved and confirmed as by law provided; *And, provided, further*, That the state board of land commissioners shall not authorize the treasurer to purchase more than ten per cent. (10%) of the total issue of such bond in any one irrigation district, as follows: The state board of land commissioners shall be authorized to enter into a contract with the board of directors of an irrigation district; which contract shall provide that the treasurer of the state of Colorado shall purchase the said amount of such bonds

when the state engineer shall certify to said board that the system of reservoirs, ditches or other irrigation works of said district, for the construction of which said bonds were voted, have been fully completed, and a sufficient water supply secured to successfully operate same.

Permanent funds remaining uninvested as above provided, shall be loaned out by the treasurer at the direction of the state board of land commissioners in sums of one thousand dollars or less to one person or company, in case it is found impracticable to keep the whole amount of funds loaned in sums of five hundred dollars or less to one person or company. In the event that such permanent funds can be kept loaned out in sums of five hundred dollars or less to one person or company, then no loan shall exceed five hundred dollars, nor shall a loan of such fund or funds be made to or in the interest of any member of the state board of land commissioners; each loan shall be made for at least one and not more than five years, evidenced by promissory notes bearing six per cent. interest, payable semi-annually, and delinquent interest shall draw the rate of seven per cent. per annum, said promissory note to be secured by a deed of trust on unincumbered real estate for at least double the sum borrowed, situated in the county in which the loan is made, and appraised as hereinafter provided. (L. 1905, p. 334, sec. 37; sec. 5198, R. S. 1908, p. 1223.)

Sec. 152. **Applications for loans — Protecting loans.**—All applications to borrow from the permanent school fund shall be made through the board of county commissioners to the register of the state board of land commissioners upon a blank form provided for that purpose, who shall cause the proper appraisement to be made by the board of county commissioners as hereinafter provided, and, if satisfactory, he shall examine any abstract of title which the proposed borrower may submit, or he may cause an abstract to be prepared at such borrower's expense. If the title is found to be perfect and the lands unincumbered, he shall certify this fact to the state board of land commissioners and submit the application and all the papers connected therewith to the board at its regular meeting, at which meeting the loan shall be approved or disapproved. If the application is accepted, the register of the state board of land commissioners shall complete the contract by taking a promissory note, payable to the state board of land commissioners, secured by a deed of trust, upon such unincumbered real estate, and shall certify same to the state treasurer, who shall pay over to the borrower the amount named in the note. The board may reject the application for any good cause. If it shall happen that the loan is made upon real estate which is in fact incumbered other than for taxes, the board

of land commissioners may, when necessary for the safety of the loan, appropriate out of the fund from which the loan is made, if such incumbrance does not exceed one-half of the real value of the lands, so much as may be needed to take up and purchase the same, and may also, at any meeting, by resolution, assign, without recourse, upon payment of the amount due upon any note and deed of trust, to any person holding a subsequent lien upon the real estate held as security by said board. (L. 1905, p. 335, sec. 38; sec. 5199, R. S. 1908, p. 1224.)

Sec. 153. Report of loan to county commissioners—Depreciation of security.—Each loan made in the several counties, when fully completed, shall be reported by the register of the state board of land commissioners to the board of county commissioners of the county in which the real estate and land offered as security are situated, and in which the loan is made, and a minute of such report shall be entered upon the records of such board and from time to time, at least once a year, all loans, with the security given, shall be carefully examined, and a report made to the state board of land commissioners, which examination shall be conducted by a member of the board of county commissioners, or some competent person selected by it. When a report shows that the security in a given case has, for any cause, depreciated so that it is no longer sufficient, or it appears that there was a prior incumbrance thereon which materially affects the value of the security, the state board of land commissioners shall order the debtor to furnish additional security, and shall fix a reasonable time within which the same shall be given, and if the party so ordered fails to comply therewith for thirty days after the date of such order, and the mailing of a copy of same to his last known postoffice address, the entire debt shall become due, and an action may be brought to enforce the collection thereof, and these provisions shall enter into and form a part of the contracts of loans, whether incorporated therein in words or not. (L. 1905, p. 336, sec. 39; sec. 5200, R. S. 1908, p. 1225.)

Sec. 154. Application for loan referred to county commissioners.—When application is made for a loan as herein provided, the register of the state board of land commissioners shall refer said application to the board of county commissioners of the county in which the land is situated which is offered as security for said loan, which board shall cause an appraisement to be made of the valuation of said land and the buildings thereon, and shall certify to the register of the state board of land commissioners the valuation of same, together with a recommendation as to the sufficiency of the security, the character of the applicant,

and the advisability of making said loan. (L. 1905, p. 337, sec. 40; sec. 5201, R. S. 1908, p. 1225.)

Sec. 155. Renewals of loans.—When a loan has been made and the borrower desires to renew the same for one or more years, it may be done in the same manner as the loan was made in the first instance, but no new abstract, except a continuation of the same down to the time, nor examination of title prior to the original loan, nor new deed of trust need be given, unless the deed of trust is to be given upon other lands. The time of payment, without further security, may be extended in writing to be recorded as the original security was recorded, and before maturity of the claim when the state board of land commissioners shall so order, but such extension of time shall not operate to release any security held, and lapse of time shall in no case be a bar to any action to recover any part of the school or other permanent fund so loaned, nor shall it prevent the introduction of evidence in such action, any provision of the law to the contrary notwithstanding. (L. 1905, p. 337, sec. 41; sec. 5202, R. S. 1908, p. 1225.)

Sec. 156. Payments on loans—Permanent fund accounts.—All payments of either principal or interest upon loans, or of any other character, shall be made to the register of the state board of land commissioners, and when the debt is fully paid the register of said board shall release any deed of trust, or issue certificate of purchase or patent, as the case may be, and report the same to the state board of land commissioners at its next meeting, which report shall be carried into the records of the board. The register of the state board of land commissioners shall also keep in his office, in books to be provided for that purpose, accounts to be known as "Permanent fund accounts," in which a memorandum of all notes, mortgages, deeds of trust, bonds, money and assets of every kind and description which may come into his hands as such register shall be entered and separated accounts of principal and interest must be kept. (L. 1905, p. 337, sec. 42; sec. 5203, R. S. 1908, p. 1225.)

Sec. 157. Loans to be apportioned annually to each county.—The state treasurer and the state superintendent of public instruction shall, on the first day of January of each year, apportion upon the basis of the school population of each county, as ascertained by the last preceding census, the amount of money from each of the various permanent funds to be loaned in compliance with this act in each county in the state, and shall certify the same to the register of the state board of land commissioners, who shall certify the same to the county commissioners of each county, and it shall be the duty of said county commissioners,

upon application from any citizen or citizens of said county, to inform him or them of the amount to be so loaned, and the terms thereof. (L. 1905, p. 338, sec. 43; sec. 5204, R. S. 1908, p. 1225.)

Sec. 158. County record of loan fund.—The county commissioners of each and every county in the state of Colorado shall keep a set of account books, showing the amount of money set aside to be loaned in their respective counties from the permanent funds under the control of the state treasurer, the amount loaned and interest due thereon, and shall keep a record of all reports made upon such loans or applications for loans passing through the hands of the board of county commissioners. (L. 1905, p. 338, sec. 44; sec. 5205, R. S. 1908, p. 1226.)

Sec. 159. Transfer of unloaned fund to other counties.—When there are funds in the hands of the state treasurer belonging to any of the permanent funds which have been set apart for any county, amounting to one thousand dollars, that can not be loaned, the county treasurer shall certify this fact to the register of the state board of land commissioners, who shall order a transfer thereof to some other county or counties where, in his opinion, it can be loaned, and the state treasurer shall make such transfer. Upon such transfer being made, the state treasurer, and also the register, shall deduct such amount from the amount apportioned to such county, and shall add the same to the amount apportioned to the county or counties to which the transfer is made with the amount so transferred. (L. 1905, p. 338, sec. 45; sec. 5206, R. S. 1908, p. 1226.)

Sec. 160. County responsible for bad loans—Tax levy.—The county in which any loan is made from any permanent fund, either for school, agricultural college, or any other permanent fund, under the control of the state treasurer, which shall be derived from the sale of lands appropriated by the congress of the United States as a permanent grant, shall be responsible for any loss which may be incurred by any such loan from such fund, and in case a loss does occur because of such loan the county commissioners of the county in which such loan was made, and in which the land was situated which was given as security for said loan, shall make a tax levy at the next succeeding general tax levy to reimburse the state treasurer for such loss, which tax levy shall be added to the general tax levy for state and county purposes, and shall be collected proportionately from all of the taxable property situated within said county. (L. 1905, p. 338, sec. 46; sec. 5207, R. S. 1908, p. 1226.)

Sec. 161. Procedure when loans overdue and unpaid.—When outstanding notes for money of any permanent fund loaned or

interest thereon becomes due, the register of the state board of land commissioners shall, by mail, at once notify the debtor to make payment thereof within thirty days. If such debtors shall neglect to comply with such notice, the register of the state board of land commissioners shall report the same to the attorney general and to the attorney for the state board of land commissioners, who shall immediately bring action to recover the same, and an injunction may issue for cause, without bond, when so prayed. Upon the sale of lands under an execution found upon a permanent fund claim or right, the register of the state board of land commissioners shall bid at such sale as the interests of such fund requires, and if struck off to the state it shall be thereafter treated in all respects the same as other lands belonging to said fund, and shall be regarded as property of the state as if the same had never been sold. (L. 1905, p. 339, sec. 47; sec. 5208, R. S. 1908, p. 1226.)

Sec. 162. Penalty for neglect of duty by county officer.—Any county officer failing or neglecting to perform any of the duties which are required of him by the provisions of this act shall be liable to a penalty of not less than five dollars, and not more than five hundred dollars, to be recovered by an action of debt in the district court in and for the city and county of Denver by the state board of land commissioners, the judgment to be entered against the party and his bondsmen, and the proceeds to go to the permanent public school fund. (L. 1905, p. 339, sec. 48; sec. 5209, R. S. 1908, p. 1226.)

Sec. 163. Sale of lands bought in.—When lands have been sold and have been again recovered by the state board of land commissioners in behalf of the fund to which they properly belong, upon a judgment in favor of such fund, the land may be sold in like manner as other state lands. (L. 1905, p. 339, sec. 49; sec. 5210, R. S. 1908, p. 1226.)

Sec. 164. Terms of payment for land.—When, in the judgment of the state board of land commissioners, any of the state lands are of such character that a sale upon partial credit would be unsafe and incompatible with the interests of such permanent fund, the state board of land commissioners may exact the whole of the purchase money in advance, or, if it sells such land upon partial credit, it shall require good collateral security for the payment of the part upon which credit is given. (L. 1905, p. 340, sec. 50; sec. 5211, R. S. 1908, p. 1227.)

Sec. 165. When interest due—Effect of default.—In all cases where money is due to any of the permanent funds, either for lands or purchase price of lands sold, or for interest upon either

of same, the interest shall be made payable on the first day of January and the first day of July of each year, and if the debtor fails to pay the same within thirty days thereafter, the entire amount of both principal and interest shall become due, and the register of the state board of land commissioners shall at once make a report of same to the attorney general and to the attorney for the state board of land commissioners, who shall immediately commence action for the collection of the amount reported to them as due, and this section and each provision thereof is hereby declared to be a part of every contract made by virtue of this chapter, whether expressed therein or not. (L. 1905, p. 340, sec. 51; sec. 5212, R. S. 1908, p. 1227.)

Sec. 166. Mineral department — Superintendent — Salary — Duties—Report—Bond.—The state board of land commissioners are hereby authorized and directed to establish, under the jurisdiction of the register of the state board of land commissioners, a mineral department, and appoint a superintendent of the same at a salary of two thousand (2,000) dollars annually, who shall have been a resident of the state of Colorado for more than five years last past, and shall have had experience as a mining engineer for at least five years, and shall be familiar with mining and the underground workings of mines. It shall be the duty of the superintendent to inspect in person all mines and other works operated under leases from the state of Colorado, for the production of precious metals, coal, iron, oil or other mineral products upon which rentals are due to the state upon the basis of a royalty upon the production therefrom, as often from time to time as he shall deem necessary for the purpose of estimating and checking royalties therefrom; he shall also make surveys and keep such maps of the workings of all mines as will give the land department full information concerning the same; and shall supervise all mining and require the same to be done in accordance with the best methods of mining; he shall also check the royalties reported as due under such lease for the preceding month and compare the same with the surveys and other inspections made by him; and shall report on or before the 20th day of each month the result of such examinations and checking to the state board of land commissioners; every mine and other works upon the public domain of the state of Colorado, held under lease therefrom by any person, association, co-partnership or corporation, shall be at all times subject to the inspection of the superintendent. He shall inspect and examine all lands held under lease from the state of Colorado, providing for the payment of royalties from the production therefrom, and report to the state board of land commissioners the condition of said lands, the amount of work and develop-

ment done thereon by such lessee, and make such recommendations relative thereto as he may deem advisable. A further sum, not in excess of six hundred (600) dollars annually, shall be allowed the superintendent for expenses. Before entering upon his duties as superintendent, the appointee of the state board of land commissioners shall give bond to the state of Colorado, in the penal sum of ten thousand (10,000) dollars, conditioned upon the faithful discharge of his duties. (L. 1905, p. 340, sec. 52; sec. 5213, R. S. 1908, p. 1227.)

Sec. 167. **Coal royalties—Tonnage—How calculated.**—Any person, association, co-partnership or corporation leasing and operating coal lands under the provisions of this act shall pay to the deputy register of the state board of land commissioners a minimum price of not less than ten (10) cents for each and every ton of coal mined from said land, to be paid monthly, on or before the 25th day of each month for the coal mined during the preceding calendar month. Should the person, association, co-partnership or corporation so leasing coal land fail to mine during any one year the minimum amount that may be provided for in the terms of the lease, then the amount so paid shall be applied and deemed as an advance payment of royalty upon coal actually mined in any subsequent year in excess of the minimum provided for in said lease. The term ton, as herein used, means twenty-seven (27) cubic feet of coal, measured in the solid, and shall be ascertained by the measurements of the space from which the coal is mined, deducting therefrom all space occupied by slate or other impurities. Such measurements shall be made monthly by the superintendent of the mineral department, according to the provisions of this act. (L. 1905, p. 341, sec. 53; sec. 5214, R. S. 1908, p. 1227.)

[Mining leases. Section 127.]

[Ton defined. Sections 662 and 7025, R. S. 1908.]

Sec. 168. **Mining location on state lands.**—Locations of mineral claims not exceeding three hundred feet wide and fifteen hundred feet long each, may be made upon unleased lands belonging to the state of Colorado, as hereinafter provided. The discoverer of a body of mineral, in either a lead, lode, ledge, deposit, vein or contact, shall immediately post conspicuously a notice declaring that he has made such discovery on the date attached to said notice. The locator shall be allowed ninety days from such date in which to perform assessment work by shaft or tunnel, which assessment work shall not be at a less cost than one hundred dollars in each year, and to survey and set the corner posts of said claim, and to file a certificate of location with the register of the state board of land commissioners, which certificate shall

be recorded in said office, and an entry made upon the plat and tract books of such location; such procedure shall empower the locator to retain possession of and operate said claim for a period of one year, at the end of which time he shall be required to purchase said claim or take a lease upon such terms as may be agreed upon by the state board of land commissioners. Should the locator elect to purchase said claim, it shall not be sold at less than ten (10) dollars per acre. (L. 1905, p. 342, sec. 54; sec. 5215, R. S. 1908, p. 1228.)

Sec. 169. State patent to mining claims.—Before any locator will be allowed to purchase the claim located by him, satisfactory proof must be submitted to the state board of land commissioners that said section is more valuable for mineral purposes than for any other purpose, and that the mining claim for which patent is applied, contains a body of mineral in place of sufficient value to justify the operation of same as a merchantable product; *Provided*, That filing shall not be accepted upon coal, oil or stone lands. (L. 1905, p. 342, sec. 55; sec. 5216, R. S. 1908, p. 1228.)

Sec. 170. Allowance to lessees when their land is sold.—When an application to purchase state or school land, which has been under lease for not less than five years, shall be filed in the office of the state board of land commissioners, the register shall refer the same to an appraiser, who shall visit the land proposed to be purchased, and who shall report in writing to the state board of land commissioners, giving the value of said land at the time it was first leased, and an estimate of the present value of said land by reason of the lessee's cultivation and improvement of same, and fifty per cent. of the difference between the valuation at the time of issuing lease and the valuation at the time of filing the application for purchase, shall be allowed as an improvement to be paid for if land is purchased by any person other than the lessee, and the said lessee to receive the sum so paid by reason of the cultivation or improvement of said land as payment for his labor. (L. 1905, p. 342, sec. 56; sec. 5217, R. S. 1908, p. 1228.)

Sec. 171. Exchange of lands in forest reserves.—The state board of land commissioners is hereby authorized and empowered to exchange any lands, the income from which is devoted to the public schools of the state of Colorado, the state university, the state agricultural college, penitentiary, internal improvements, saline or any other lands which may be under the control of said state board of land commissioners, and which may have been granted to said state of Colorado by the congress of the United States, and which lands are situated within the exterior boundary line of any federal forest reserve which may have been heretofore,

or shall be hereafter established, for such unappropriated federal lands in the state of Colorado as the state board of land commissioners may select; and the register of said land board is hereby empowered to sign all papers necessary to such transfer, under the direction of said board. (L. 1905, p. 343, sec. 57; sec. 5218, R. S. 1908, p. 1228.)

[Application to cut timber on state land. Sections 28-34.]

[Unlawful to set fire to timber lands. Section 2737, R. S. 1908.]

STATE FUNDS

Sec. 172. **Treasurer custodian of all state money—Provisions—Expenditures.**—The state treasurer is hereby designated as the custodian of all moneys belonging to the state of Colorado or to any institution, bureau, or department or public office of the state. All appropriations heretofore or hereafter made shall be withdrawn from the hands of the state treasurer only as the expenditures authorized by such appropriations are incurred and the payments thereon become due; and no withdrawal of funds from the treasury shall be lawful or permitted in any instance for the purpose of depositing such moneys in banks or with other private or public trustees.

The provisions of this act shall apply, but not exclusively, to all appropriations made for maintenance of or construction for, state institutions whether continuing or biennial, or in any other form, and whether in the form of special mill levies, or as appropriations from the general funds, or from any special or limited funds, and shall apply to appropriations from the internal improvement fund.

All expenditures from funds in the hands of the state treasurer as custodian or otherwise, shall be withdrawn only upon the issuance of vouchers certified or approved by the person, persons, officer or institution having control and direction of such fund, and by warrants drawn against such funds in accordance therewith by the state auditor. (Ch. 147, S. L. 1913, p. 580.)

Sec. 173. **Institutions shall deposit all fees, etc., with state treasurer—Officials in state capitol building shall make daily deposits—Other officials shall make monthly deposits.**—The several educational, charitable and penal institutions of the state which derive moneys from tuition fees, contributions, or the sale of products, or from any other source, and the several departments and officers of the state who derive or receive moneys from fees, taxes, sales, penalties, licenses, permits, or other sources, are hereafter required to deposit such funds with the state treasurer

as custodian thereof. The various cash, fee and other funds above described shall be drawn upon and diminished by the officers having authority so to do, only by vouchers and warrants as above described. It shall be the duty of every department and officer receiving any public moneys whose office shall be in the state capitol building, to deposit such funds including funds paid in under protest daily in the office of the state treasurer, who shall receipt therefor, and such deposit shall be made to accord with the regulations of the public examiner. Every other officer, department and institution shall deposit monthly with the custodian, and in such form, and on such day as may be prescribed by the regulations of the public examiner. *Provided, however,* That items of postage, express, telegrams and similar incidental expenses may be paid by any state institution and a voucher drawn monthly at the end of each month to cover the total amount of such expenses for such month and the auditor shall draw his warrant on the state treasurer for the amount of such vouchers when properly approved. *Provided,* That a sum of not exceeding one thousand dollars (\$1,000) may be kept with the local treasurer of each state educational, charitable or penal institution for emergencies, said sum shall be subject to the order of the board of control of the institution to which said fund belongs. (Ch. 147, S. L. 1913, p. 581.)

Sec. 174. Public officers shall report receipts to state auditor.—It shall be the duty of every public officer, department and institution which is authorized by law to receive money from sources other than appropriation from the revenues of the state, to report to the state auditor in such form as the public examiner may prescribe, and on such date as he may prescribe, in the first week of each month following the date set for the transmission of such funds to the state treasurer. Such report shall be made under oath and shall state fully the sources and amounts of all moneys received during the period covered by the report. (Ch. 147, S. L. 1913, p. 581.)

Sec. 175. State treasurer custodian of all funds paid in under protest.—Funds lodged with the state treasurer under this act which are not creditable to the general revenue of the state, and which have been or may be by law designated for purposes other than such general revenue or which shall have been paid in under protest shall not be deposited in the treasury of the state, or considered therein, but shall be held by the state treasurer as custodian, separate and apart from such funds, and may be withdrawn from his custody for the purposes and under the control of the officers now or hereafter vested with authority so to do,

subject, however, to the requirement of vouchers and warrants as above described. (Ch. 147, S. L. 1913, p. 582.)

Sec. 176. Regents of university shall have exclusive control of its funds.—Nothing in this act shall be construed to deprive the Regents of the University of Colorado of the exclusive control and direction of all funds and appropriations to the University, and this act is intended only to provide for the safe custody and proper preservation of the said funds. The unconstitutionality of any provision or provisions of this act as applied to any fund or funds, or to any officer, department or institution, shall be construed to render inoperative only the provisions as applied to such funds, officers, department or institution, and the unconstitutionality of any single provision or provisions herein shall not render the other provisions inoperative, the various requirements being declared separable. (Ch. 147, S. L. 1913, p. 582.)

Sec. 177. Every state officer who receives money shall maintain receipt books.—Every public officer, board, commission, bureau, department or institution of the state which receives or may be entitled to receive funds in the form of fees, tuition, licenses, taxes, penalties, sales, permits or moneys from any source other than appropriation from the treasury, or which is entitled to receive or does receive moneys in any form from the general public, shall maintain a receipt book, or in any instance the public examiner shall expressly so authorize, two or more sets of receipt books, which shall be public documents. The receipts issued, or if the maintenance of two or more sets of receipts is expressly authorized, the receipts of each set of receipt books shall be consecutively numbered in series, without duplication, gaps or repetition in any form whatsoever, except the single duplicate or stub retained by the issuer. For every sum of money whatsoever received by such public officer, board, commissioner, bureau, department or institution, a receipt shall be issued in order of such payment, the number of which printed thereon, shall follow next after the last receipt issued, and no receipt shall be issued out of the order or sequence prescribed herein. The issuance of each receipt shall be accompanied by the preparation of a stub or duplicate similarly numbered and containing the same matters. Receipt forms which may be cancelled or spoiled shall in no case be substituted for, but shall be preserved with the stub and so designated as cancelled or spoiled, and the receipt form next in numerical order shall be issued instead. (Ch. 147, S. L. 1913, p. 582.)

Sec. 178. Violations a misdemeanor—Punishment and fine—Penalty for retaining money.—Failure to transmit or deposit moneys of fund as provided in this act, or failure to report as

provided herein, or the expenditure of any public fees or moneys except in the manner provided for herein, or wilful false statement under oath in any report required herein, or the violation of any of the provisions of this act, shall be deemed a misdemeanor, punishable by a fine of not to exceed one thousand dollars (\$1,000.00) or by imprisonment for not to exceed one year, and every member of a board or commission which may be in default shall be deemed individually liable if assenting thereto.

In addition thereto, any person or persons wilfully retaining public moneys beyond the period permitted by this act shall be liable to the people in a penalty of one per cent. thereof for each day in default to be recovered in a civil action filed by the attorney-general upon request of the state treasurer. (Ch. 147, S. L. 1913, p. 583.)

Sec. 179. **Shall not affect county officers.**—Nothing in this act shall affect the duties of any of the county treasurer or other county or city officer. (Ch. 147, S. L. 1913, p. 583.)

Sec. 180. **Safety clause.**—The general assembly hereby declares that this act is necessary for the immediate preservation of the public safety. (Ch. 147, S. L. 1913, p. 584.)

STATE FUNDS—FEES AND COLLECTIONS

Sec. 181. **Shall pay over moneys to state treasurer on or before the second Monday of each month.**—Every officer and employe whose duty is to collect moneys for the state of Colorado, whether as fees or otherwise, and whether or not such moneys or any part thereof be a fund out of which his compensation and expenses, or either of them, are to be paid, shall unless otherwise provided by law pay over all moneys so collected by him to the state treasurer on or before the second Monday of each month, without first deducting therefrom any part of his salary or other compensation, or any part of the expenses of his office; which salary, compensation and expenses, if legally chargeable, shall when the claims have been duly presented and audited in the manner prescribed for the allowance of all claims against the state, be paid out of the proper fund or funds as provided by law. (Ch. 148, S. L. 1913, p. 585.)

Sec. 182. **Violations—Misdemeanor—Penalty.**—Any officer who violates this act shall be deemed guilty of a misdemeanor and, upon conviction in a county or district court, he shall be punished by a fine of not to exceed one thousand dollars, or by imprisonment for not exceeding one year, or by both such fine and

imprisonment; and a conviction hereunder shall operate as a permanent removal of the defendant from the office or employment held by such defendant. (Ch. 148, S. L. 1913, p. 585.)

Sec. 183. **Safety clause.**—The general assembly hereby declares that this law is necessary for the immediate preservation of the public safety. (Ch. 148, S. L. 1913, p. 586.)



